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No. _____

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1999

ROBERT I. RINGO,

Petitioner,

vs.

WASHINGTON STATE LIQUOR CONTROL BOARD,

Respondent,

Petition for a Writ of Certiorari to the Washington State Court of Appeals, Division II

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9707

QUESTIONS PRESENTED

1. Are those representing themselves pro se entitled to have judges make their legal rulings based on a good faith interpretation of the law, and not on non-legal factors?

2. Did the Washington State Personnel Appeals Board deny petitioner due process by the manner in which the Appeals Board conducted the hearing?

3. Did the Appeals Board violate petitioner's due process by employing individuals to adjudicate the hearing who were not members of the Washington State Bar, yet whose principle duties were to make legal decisions?

4. The courts of this country have consistently held that the trier of the facts is the sole judge of the credibility of the witnesses. Are such legal rulings based on clearly erroneous premises?

5. Do the civil rules apply to hearings before administrative agencies if the civil rules are not specifically adopted by statute?

6. Is a witness entitled to make a demand for witness fees prior to appearing to testify?

7. RCW 41.64.110 states in part that the technical rules of evidence shall not apply to hearings before the Appeals Board. Does the lack of any rules of evidence violate due process under the fourteenth amendment?

8. Did Kelly Reese, Assistant Attorney General, deprive petitioner due process by unlawfully tampering with his witnesses, by removing exhibits from the record without informing the Appeals Board or petitioner, by including on her witness list witnesses she never intended to have testify, and by subordinating perjured testimony?

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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

No. _____

ROBERT I. RINGO,

Petitioner,

vs.

WASHINGTON STATE LIQUOR CONTROL BOARD,

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE WASHINGTON STATE COURT OF APPEALS, DIVISION II

Robert I. Ringo hereby petitions for the issuance of a writ of certiorari to review the decision and judgment of the Court of Appeals of the State of Washington, Division II in Robert I. Ringo v. Liquor Control Board, No. 22040-7-II issued on December 10, 1998. A motion to modify the order was denied in an order dated February 26, 1999. The Washington State Supreme Court denied the petitioner's Petition for Review on August 31, 1999.

OPINIONS BELOW

The December 10, 1998 decision of the Court of Appeals is unpublished (Pet. App. C pp. 3a-6a). The May 8, 1997 decision of Thurston County Superior Court is unpublished (Pet. App. D pp. 7a-22a). The April 2, 1996 decision of the Appeals Board is published in the Appeals Board Summary of Decisions, Volume XV, page 44 (Pet. App. E pp. 23a-35a).

JURISDICTION

The jurisdiction of the Court is pursuant to U.S.C. Sec. 1257(a).

CONSTITUTIONAL, STATUTORY AND RULES PROVISIONS INVOLVED

The constitutional provisions, statutes and rules involved in this case are as follows:

U.S. Constitution, Amend. XIV. Due Process Clause

Sec. 1 ***nor shall any state deprive any person of life, liberty or property, without due process of law***..

Internal Revenue Code, Sec. 6110(k)(3)

Precedential Status - Unless the Secretary otherwise establishes by regulations, a written determination may not be used or cited as precedent. The preceding sentence shall not apply to change the precedential status (if any) of written determinations with regard to taxes imposed by subtitle D of this title.

Rules of Civil Procedures (in general)

STATEMENT

The affirmation of the petitioner's dismissal as an auditor with the Washington State Liquor Control Board by the courts in the State of Washington has a chilling effect on those pro se to receive justice and equity in the courts. The members of the Appeals Board conduct themselves in a manner that grossly violates the due process rights of state employees appealing disciplinary action.

The petitioner was employed by the Liquor Control Board as an auditor in Spokane from June 1, 1989 to August 31, 1995. The petitioner's duties included auditing liquor stores and agencies, breweries, wineries, beer and wine distributors, and liquor lounges. The petitioner was one of ten auditors employed by the Liquor Control Board. The petitioner's assigned territory was principally the northeastern quarter of the State of Washington.

The petitioner, a certified public accountant (CPA), almost from the time he started work with the Liquor Control Board, had continuing and on going problems with his supervisors - Jim Hoing, the appointing authority, and Bob Schulhauser, Audit Manager and the petitioner's direct supervisor. These problems regarded their incompetence and their continued willful violations of personnel procedures, violations of statutes (including felonies), and their daily violations of professional auditing standards.

Bob Schulhauser was promoted from Liquor Control Board auditor to audit manager on April 1, 1989. Neither Jim Hoing or Bob Schulhauser have any professional certifications. Since he has been audit manager he has had four CPA's on the audit staff. By design, he now has none. The minimum qualifications for the Liquor Board's audit staff include at least one year of professional accounting or auditing experience.

After petitioner's employment was terminated, he was replaced by an individual who was an assistant liquor store manager who was not professionally certified and had no prior professional experience.

Phil Loe, a CPA and one of the Liquor Control Board auditors in Seattle, filed two complaints with Bob Schulhauser. The first complaint, filed on February 2, 1993, pertained to numerous violations of professional auditing standards by Bob Schulhauser. The second complaint, filed February 5, 1993, pertained to Bob Schulhauser's lack of leadership qualities. Shortly thereafter, Jim Hoing and Bob Schulhauser retaliated against Phil Loe and scheduled him for a disciplinary hearing. Effective July 31, 1993, Phil Loe officially resigned his position. He was replaced by Martin Mitchell. Martin was a liquor store clerk with no prior professional experience and no professional certification.

John Tardiff, the Liquor Control Board's auditor in the Olympia area died of complications related to a heart attack in September 1992. He was replaced by Mario Cruz. Mario was a liquor store manager just prior to joining the audit staff. He too has no professional certification and no prior professional experience.

The last three individuals Bob Schulhauser has hired he has deliberately limited hiring to "in-house". He limited hiring to "in-house" knowing full well that there was no one who was professionally certified or had any prior professional accounting or auditing experience. He willfully limited hiring to "in-house" because he was tired of those who were professionally certified of letting him know that he is utterly incompetent and objecting to his repeated and flagrant violations of professional auditing standards. This willful discrimination against those who are professionally certified is a violation of

RCW 49.60.010. RCW 49.60.020 states that the statute is to be liberally construed.

Chairman McGavick's efforts to privatize the retail operations of the Liquor Control Board

The Liquor Control Board is governed by a three man board of directors. On or about October 1, 1993, Joe McGavick was appointed by then Governor Lowry to be the new chairman of the Liquor Control Board's board of directors. The principal reason which Joe McGavick was appointed chairman of the board of directors was to study the issue of privatizing the retail operations of the Liquor Control Board.

The State of Washington is what is referred to as a "Control State". This means hard liquor by the bottle is only sold through outlets operated by the State of Washington. Joe McGavick, in his efforts to privatize the retail operations of the Liquor Control Board, continually encountered substantial opposition on virtually all fronts. During the 1995 legislative session, a subcommittee of the State Senate soundly defeated his proposed legislation to privatize the retail operations of the Liquor Control Board.

In early 1994, the Internal Revenue Service's National Office issued a determination letter that one of the Liquor Control Board's approximately 160 agency managers was an independent contractor for tax purposes. Joe McGavick, desperate to privatize the retail operations, applied the determination letter to all agency managers. His actions were strictly barred by Internal Revenue Code Sec. 6110(k)(3). Prior to the determination letter, the IRS's Seattle District in examining the tax returns of various agency managers, had found, without exception, the agency managers to be employees. At the conclusion of a CPA luncheon, Mel Joseph, Chief, Examination Division, Seattle

District for the IRS, told petitioner that the determination letter was the worst determination letter he had ever seen and that the conclusion that the one agency manager was an independent contractor was absolutely wrong.

Complaint to the Human Right Commission

The petitioner filed a formal complaint with the State Human Rights Commission regarding the Liquor Control Board's willful discrimination against those who are professionally certified. The Human Rights Commission refused to investigate the complaint. The explanation was they only had the authority to investigate for the normal and usual reasons - race, color, sex, etc. Petitioner responded by pointing out that the Washington State Supreme Court had held in *Marquis v. The City of Spokane* 922 P.2d 43 (1996) that the law against discrimination is nonexclusive. They also held that the principal purpose of the statute is to deter and eradicate discrimination in the State of Washington. The Human Rights Commission countered by stating the *Marquis* decision only applied to actions in court. It is absurd and irresponsible of the Human Rights Commissions to suggest that an individual could ever have a cause of action in the courts of the State of Washington alleging discrimination in violation of the State human right statute, and at the same time the Human Rights Commission would not have the authority to investigate the underlying discrimination that led to the cause of action.

Whistleblower complaint to the State Auditors Office

The petitioner also filed a formal with the State Auditors Office pursuant to RCW 42.40 - the State whistleblower statute. The complaint was ultimately denied. An examiner with the State Auditors Office talked to petitioner on the phone for about 35 - 40 minutes during the initial investigation of the complaint. However, at no time during the course of the investigation did anyone from the State Auditors Office talk to me in person. There were also numerous exhibits directly relevant to the complaint that were not considered. They investigated allegations not made and failed to investigate allegations made. The State Auditors Office was grossly negligent and professionally negligent in their investigation of petitioner's whistleblower complaint.

The Appeals Board willfully refused to hold the hearing in a timely manner

RCW 41.64.100 requires that the Appeals Board to hold the hearing and render its decision within 90 days of the receipt of the appeal. The Appeals Board received petitioner's appeal on August 29, 1995. The Appeals Board heard the appeal on February 29, 1996.

The Appeals Board was created during the 1981 legislative session by HB 302. The Appeals Board commenced operations on July 1, 1981. Prior to the Appeals Board, the State Department of Personnel adjudicated disciplinary appeals involving state employees. The sole reason the Appeals Board was created was because the state legislature was unhappy with the State Department of Personnel taking a year or longer to hear appeals. The sole reason the Appeals Board was created was to hold these hearings in a timely manner.

The Washington State Supreme Court in *Liquor Control Board v. State Dept. of Personnel* 561 P.2d 195 (1977), held that whether a statute is mandatory or advisory depends upon legislative intent. When the legislature created the Appeals Board, there can be no doubt as to the legislatures intent. It was mandatory for the Appeals Board to hold my hearing and render its decision within 90 days of receipt of petitioner's appeal. RCW 41.64.100 also states in part that an extension of time can only occur with the consent of both parties. In a letter dated December 1, 1995 to Ken Latsch, Executive Secretary of the Appeals, petitioner made it very clear that at no time did he ever agree to an extension of the 90 day deadline.

Ken Latsch, on October 18, 1995, during a conference call with petitioner and Lynn Wise, AAG, stated that the Appeals Board had a backlog of over 500 appeals. As such, the Appeals Board knew that they could not comply with the statute unless they engaged the services of a hearing examiner. RCW 41.64.080 authorizes the Appeals Board to engage the services of hearing examiners. The Appeals Board had an affirmative duty to engage the services of a hearing examiner.

The Appeals Board failed to render its decision in a timely manner

The Appeals Board rendered its decision on April 2, 1996. This was 33 days after the hearing was held. RCW 41.64.120 requires the Appeals Board to render their decision within 30 days of the hearing. The significance of the Appeals Board not complying with this statute is that it is part of a pattern by the Appeals Board of willful contempt of complying with statutes and court decisions.

The Appeals Board failed to promptly provide petitioner with a copy of the transcript

On March 1, 1996, the day after petitioner's hearing, petitioner requested from the Appeals Board a copy of the transcript. Petitioner finally received a copy of the transcript on August 7, 1996. This was more than five months after petitioner first requested a copy of the transcript.

Petitioner filed his appeal with Thurston County Superior Court on April 30, 1996. The Appeals Board was required by RCW 41.64.130(3) to transmit to the court a certified copy of the transcript within 30 days of the notice of appeal. Thurston County Superior Court received the transcript on July 26, 1996. This was almost 60 days after the statutory deadline.

The fact that petitioner did not have a copy of the transcript had a detrimental impact on his ability to write an effective appeal. The fact that he did not have a copy of the transcript until August 7, 1996 had a detrimental impact on his ability to write an effective brief.

The conduct of the Appeals Board before and during petitioner's hearing was despicable

Charles Alexander became chairman of the Appeals Board on July 1, 1992. From that time until the day of petitioner's hearing on February 29, 1996, the Appeals Board had only reversed two dismissals outright - a period of almost four years. A review of the published decisions of the Appeals Board for the period July 1, 1992 - June 30, 1998, disclosed that during that six year period, there was only three dissenting votes by members of the Appeals Board.

At the outset of the hearing on February 29, 1996, the Appeals Board unlawfully granted the respondent's Motion to Quash petitioner's subpoenas.

During the hearing the Appeals Board told petitioner that he had to show the charges in the dismissal letter were untrue. This was a clear unlawful shifting of the burden of proof in violation of WAC 358-30-170. During the course of the hearing, Charles Alexander displayed a very different attitude towards petitioner than he did to petitioner's supervisors. Charles Alexander also continually interrupted the petitioner's expert witness, Phil Loe. He made it as clear as he possibly could that he did not want Phil Loe to testify.

The Appeals Board, when it finally rendered its decision on April 2, 1996, was willfully untruthful in their Findings of Fact, Conclusions of Law, and Order.

1. On page 1 - 2.1(facts) they state that the audit had already been done. They knew, or should have known, that someone who is not an auditor could not have done an audit.
2. On page 2 - 2.1 (Summary of Appellant's Arguments) they state that the petitioner said the contract violates state statute. The petitioner's position was the contract was not a valid legal contract.
3. On page 3 - 2.7 (Summary of Board's Decision) they state" Appellant simply ignored the various requirements". This was in regard to the various issues involving the subpoenas. It was in fact the Appeals Board which simply ignored the various requirements.
4. On page 7 - 3.10 (Finding of Fact) they state "He acknowledged ... without offering any evidence...". This is in regard to the issue of the Liquor Control Board's agency managers and whether they are employees or independent contractors. The petitioner's position with respect to this issue is the agency managers are employees. At no time did the petitioner ever acknowledge that the agency manager are independent contractors. Nor was the petitioner was required to present any evidence that the agency

managers are employees. This is another example of the burden of proof being unlawfully shifted. But the petitioner does have in evidence the Attorney General's Office own legal opinion that the agency manager are employees. These statements by the Appeals on page 7 - 3.10 were simply flagrant and deliberate lies.

5. On page 10 - 4.10 they state that Don Swanson was denied his witness fees. At no time did Don Swanson, or any other witness that petitioner subpoenaed ever make a demand for witness fees.

The Appeals Board refused to consider any of the petitioner's defenses

During the course of the hearing, the petitioner raised numerous defenses. These defenses included the true reason for which his employment was terminated (retaliation), first amendment (free speech), fifth amendment (double jeopardy), fourteenth amendment (due process and equal protection clauses), and that orders that he was given by his supervisors were given in bad faith and/or were illegal. The Appeals Board barely even gave lip service to any defense raised by the petitioner. The Washington State Court of Appeals, Division II, in *Goodman v. Employment Security* 847 P.2d 29 (1993) specifically told the Appeals Board that in the context of its mandate, it must consider all relevant, properly supported defenses. In that case, *Goodman* raised the issue that his agency had failed to comply with the collective bargaining agreement. Since that time, the same defense and other defenses have been raised by various appellants, including this petitioner. The Appeals Board refuses to consider any defense raised by any appellant. The Appeals Board has shown an utter and complete contempt for complying with the *Goodman* decision.

Thurston County Superior Court Decision

On May 8, 1997, the Hon. Gary Tabor rendered his decision by an oral opinion immediately following oral arguments. A reasonable and prudent judge, knowledgeable of the facts and the evidence of this case could not have applied the law in the manner in which he did.

1. He states that he believes in following the rules (p.2). He continues with such reasoning on pages 8-11 with regard to the issue of my supervisors ordering me to violate professional auditing standards. These decisions by him were a willful effort to undermine the Washington State Supreme Court's decision in *Lowry v. Industrial Ins. Appeals* 684 P.2d 678 (1984). The essence of this decision was that supervisors make mistakes and that public employees are not required to follow the rules when the rules are wrong.
2. On page 4 he says "I want to make it clear that it is not this Court's function to direct the Liquor Control Board to do anything". This is absurd. If he found the Liquor Control Board to be in non-compliance with a statute, he had a duty to order them to immediately start complying with the statute. The same would hold true if the court found that the Liquor Control Board had a history of willful non-compliance with personnel procedures and/or professional auditing standards.
3. On page 7 he continues on "In this court's opinion many of the things that you felt were unfair had to do with issues that were not directly pertinent to the decision that the Board was making a decision on". A careful review of the appeal petitioner filed with the court clearly shows that all issues raised on appeal were in fact directly relevant.
4. With respect to the inventory calculation issue (p.9) he says he believed that there were other procedures

petitioner could have followed. Once again absurd. There was absolutely nothing in the record to suggest as such.

5. In regard to the issue of using the computer for Appendices A & B (the financial statements for the liquor stores and agencies), the issue was that this was another order given in bad faith. Once again, Judge Tabor thumbed his nose at the *Lowry* decision.

6. His comments on the bottom of page 11 and continuing on page 12 were highly prejudicial.

7. At the bottom of page 12 he states that petitioner had no standing to challenge the contract. The petitioner's supervisors terminated him, in part, for not enforcing the terms and conditions of the contract. For the petitioner's supervisors to terminate the petitioner for not enforcing the terms and conditions of the contract and Judge Tabor to hold that petitioner lacked standing to challenge the validity of the contract is a most inequitable result.

8. Judge Tabor also botched in a major way the 8 hours of leave issue (pages 13 & 14). He must apply the law to the facts as the facts are, even if the facts are fortuitous. Second, at no time did petitioner raise a constitutional issue that he had a right to do a particular job. Third, Judge Tabor states that in petitioner's employer's opinion he was insubordinate and that constituted misconduct. The opinion of the petitioner's supervisors is irrelevant. What is relevant is the facts and the evidence. This Judge Tabor willfully ignored.

9. With regard to the issue of the Appeals Board employing non-attorneys to make legal decisions (page 14), he states that I cited no authority. Absolutely untruthful. I cited the state statute - RCW 2.48.170 which required the member of the Appeals Board to be member of the Washington State Bar. He also stated "This Court sees those kinds of rulings all the time".

Petitioner sincerely hope not. It is in the record that Charles Alexander, Chairman of the Appeals Board did not even understand the difference between direct and rebuttal testimony.

10. It is difficult to believe that any judge could make the legal rulings that Judge Tabor made regarding the subpoena issues (pages 15-16). First, he rewrote RCW 34.05.010(18) to make the statute read how he thought the legislature should have written the statute. No judge has any authority to rewrite a statute. He rewrote the statute to read "service, except for subpoenas". He then states that there is a more specific statute that deals with subpoenas. But he fails to state what statute it is. And for a good reason. There is no other statute which deals with the issue. Second, he held that the subpoenas were required to be served by the Appeals Board. Every judge knows that subpoenas are not served by the judge, or in this case the administrative agency, but rather, subpoenas are served by the party calling the witness. In fact, the Appeals Board own WAC, WAC 358-30-120(3) states as such. Third, he says "...a service by mail, unless someone agrees to that, is not sufficient service, according to the civil rules...". It was grossly irresponsible for him to hold that petitioner needed the other party's permission for how petitioner served the subpoenas. One never needs the other party's permission for how a particular document is served. The only authority one needs is the civil rules for matters in the courts, or by statute for administrative hearings. Lastly, for him to hold that the petitioner was not prejudiced by not being able to call witnesses was also gross irresponsible. Petitioner's witness's testimony would have been germane to the issues before the Appeals Board.

11. On page 16 he decides to sidestep the issue of petitioner's supervisors willfully perjuring their

testimony. In many instances all one has to do is to compare their testimony to the exhibits in the record. In fact, The Washington State Supreme Court in *Fannin v. Roe* 382 P.2d 264 (1963) specifically held that when there is a discrepancy between the testimony and the exhibits, the exhibits (the physical facts) must be given greater weight. The petitioner's supervisors perjuring their testimony about the computer usage issue, the inventory calculation issue, and the burglary audit issue go directly to the heart of the first and fourth items in the August 11, 1995 dismissal letter. These can hardly be considered collateral issues as Judge Tabor held.

12. Another issue petitioner raised was that he had been disciplined twice for some of the same offenses in violation of the double jeopardy clause of the fifth amendment. Judge Tabor held that since no sanctions were imposed by the letters there was no double jeopardy (p. 18). Another bad ruling by Judge Tabor. The letters, although not titled letters of reprimand, that was clearly the substance of the letters. Letters of reprimand never impose formal sanctions on an individual. There is no doubt in petitioner's mind that Judge Tabor knew this.

13. On page 19 he states that petitioner accused various parties of acting improperly. It is true that one of the issues petitioner raised was misconduct by Kelly Reese, AAG. She willfully violated various provisions of the Bar's Code of Professional Conduct and also committed a felony (witness tampering - a violation of RCW 9A.72.120). It is sad when a judge turns his cheek to numerous violations of the Bar's Code of Professional Conduct, and worst yet, a felony committed by an attorney it the representation of their client. With respect to the Internal Revenue Service, petitioner never accused the IRS of misconduct. Petitioner simply stated that the IRS reached the wrong

legal conclusion in the determination letter. In regards to the Appeals Board, petitioner did raise several issues of misconduct by the Appeals Board. There is ample evidence in the record to support petitioner's contention of significant misconduct by the Appeals Board. The gross misconduct by members of the Appeals Board was a significant violation of petitioner's due process rights. Yet, Judge Tabor was unconcerned.

14. Judge Tabor failed to rulings on a number of material issues. These include (1) the issue of the employment status of the Liquor Control Board' agency managers; (2) the burden of proof being unlawfully shifted; (3) the Appeals Board failing to hold the hearing and render its decision in a manner mandated by statute; (4) petitioner not being provided a copy of the transcript in a timely manner; (5) petitioner being retaliated against for reporting wage and hour violations; (6) the respondent's witness statements being improperly admitted into evidence; (7) the unlawful discrimination by petitioner's supervisors against those who are professionally certified; (8) petitioner being held to different standards than other auditors in violation of the equal protection clause of the fourteenth amendment; (9) that petitioner was fired, in part, for exercising his first amendment free speech rights; (10) that the petitioner was denied access to unpublished decisions of the Appeals Board which the Appeals Board cited in their April 2, 1996 decision; (11) that petitioner's right to a fair hearing was willful denied when the Appeals Board would only consider management's version of the facts and events which led to petitioner's dismissal; (12) the Liquor Control Board failing to comply with its own personnel policies and procedures - another violation of petitioner's due process rights.

Court of Appeals, Division II decision

As was the case with the decision of the lower court, a reasonable and prudent judge could not have reached the same legal conclusions that the Commissioner for the Court of Appeals reached.

1. There is no competent, relevant, substantive evidence in the record, which, within the bounds of reason, one would accept as true.
2. The Commissioner stated that substantial weight is to be given to the agency's view of the law, citing *Sullivan v. Department of Transportation* 858 P.2d 283 (1993). This was a flagrant misapplication of the decision in this case. Such legal rulings only apply to an agency's own administrative code. There is no presumed expertise in other areas of law.
3. The courts in the State of Washington do have the authority to review the credibility of the witnesses when the witness' credibility is impeached by comparing their testimony to the exhibits in the record. *Fannin v. Roe* 382 P.2d 264 (1963).
4. The actions of the Appeals Board were in complete disregard of the facts and circumstances, and were in fact unreasonable. The Appeals Board went so far as to willfully lie in some of the findings of fact.
5. The Commissioner stated that the Appeals Board was not required to consider whether my supervisor used the computer or not. This is a clearly erroneous ruling. A supervisor can not discipline an employee for doing work in the same manner in which the supervisor does the work. The Commissioner also disregarded the other argument raised by petitioner - that using the computer led to unwarranted complaints for liquor store managers.

6. With respect to the inventory calculation issue, petitioner's arguments and exhibits beyond any reasonable doubt support his claims that this is a violation of professional auditing standards. Furthermore, the respondents have never once denied that they knowingly and willfully violated professional auditing standards, nor have they ever offered a shred of evidence to the contrary.

7. At the hearing before the Appeals Board, the only evidence offered by the Liquor Control Board that the agency managers are independent contractors was Jim Hoing's testimony that they were independent contractors for tax purposes. Jim Hoing's testimony that the IRS directed the Liquor Board to apply the determination letter to all agency managers is uncorroborated. The courts duty was to apply the statute as it was written by the United States Congress and intended by Congress to be applied, and not how Joe McGavick and Jim Hoing wanted it applied for their perceived convenience in an effort to achieve the objective of privatizing the retail operations of the Liquor Control Board. However, the issue in the second and third charges in the dismissal letter is a wage and hour issue, not a tax issue. This was properly briefed by petitioner. No evidence has ever been presented by the Liquor Control Board that the agency managers are independent contractors for wage and hour purposes. In fact, the Attorney General Office's own legal opinion in evidence finds the agency managers to be employees. Most certainly Jim Hoing does not know more about the law than the Attorney General's Office. Equally absurd was the Commissioner holding the agency managers (vendors) to be independent contractors based on the contractual designation as such. Both *Cutler v. United States* 180 F.Supp. (Ct. Cl. 1960) and IRS Rev. Rul. 58-46, 1958-1 CB p. 347 held

that the contractual designation of a person as an employee or independent contract is irrelevant. What controls is the common law factors.

8. The Commissioner holding that the evidence was the district manager had done the burglary audit is simply irresponsible. As a matter of law someone who was not an auditor could not have done an audit.

9. The Court of Appeals abused its discretionary authority in failing to impose sanctions on the Attorney General's Office. The brief submitted by the respondents did not remotely comply with the Rules of Appellate Procedures.

REASONS FOR GRANTING THE WRIT

I

THE LEGAL RULINGS BY THE COURTS IN THE STATE OF WASHINGTON, AFFIRMING PETITIONER'S DISMISSAL, AND RULING AGAINST HIM ON ALL ISSUES RAISED, AND FAILURE TO MAKE RULINGS ON OTHER MATERIAL ISSUES RAISED, RAISES SERIOUS QUESTIONS AS TO WHETHER THOSE REPRESENTING THEMSELVES PRO SE ARE BEING RULED AGAINST SOLELY BECAUSE OF THEIR PRO SE REPRESENTATION

A reasonable and prudent judge, knowedgeable of the facts and evidence in this case, could not have applied the law in the manner in which the Courts in the State of Washington applied the law. Many of the legal rulings show a total disregard for the evidence. Other legal rulings show a complete contempt for rulings from this Court and the Washington State Supreme Court.

Petitioner is of a firm and definite conviction that the Courts in the State of Washington deliberately made wrong legal rulings solely because of his pro se representation. One would be hard pressed to find any legal ruling made by Superior Court or the Court of

Appeals that is the correct legal ruling. Their actions were a gross violation of petitioner's due process rights.

It is extraordinarily important that this court consider this issue. Each party to a legal action that is representing themselves pro se has an absolute right to have the judge make all legal rulings based on a good faith interpretation of the law, and not on non-legal factors.

II

THE WASHINGTON STATE PERSONNEL APPEALS BOARD, BY THE MANNER IN WHICH THEY CONDUCTED THEMSELVES BEFORE AND DURING THE HEARING GROSSLY VIOLATED PETITIONER'S DUE PROCESS RIGHTS.

Prior to petitioner's hearing before the Appeals Board, the Appeals Board had only reversed two dismissals outright in almost four years. During the same time period, there was virtually never any dissenting votes. The July 1, 1992 - June 30, 1993 and July 1, 1993 - June 30, 1994 Summary of Decisions by the Appeals Board were not published until January 1996 - about six week before petitioners hearing before the Appeals Board. Had the Summary of Decisions been published in a timely manner, petitioner would have petitioned to have the matter moved directly to Superior Court.

During the course of the hearing, petitioner made repeated attempts to have testimony about this supervisors true reasons for terminating his employment - retaliation at its very worst. Petitioner also tried to raise a number of other directly relevant defenses. The Appeals Board absolutely refused to consider any of them. There can not be a fair hearing within the meaning of constitutional due process when

only the State's version of the facts and events are considered.

Petitioner also attempted to raise a number of directly relevant issues. The Appeals Board also refused to consider any of them.

Each state has a vehicle for state employees to appeal disciplinary action. In the State of Washington, that vehicle is the Appeals Board and the evidence is in. The Appeals Board, with but a few rare exceptions, is merely rubber stamping disciplinary action taken against state employees. The Appeals Board is nothing but a farce. They are committing a fraud on all that go before them.

It is very important that this court review the conduct of the Appeals Board to ensure that state employees are receiving a fair, impartial and unbiased hearing, and a hearing that complies with due process.

III

THE APPEALS BOARD GROSSLY VIOLATED PETITIONER'S DUE PROCESS RIGHTS BY EMPLOYING NON-ATTORNEYS WHOSE PRINCIPAL DUTIES ARE TO MAKE LEGAL DECISIONS

Neither Charles Alexander, Chairman nor Nora Reynolds, Vice-Chairman are attorneys or members of the Washington State Bar. Yet, their principal duties are to make decision regarding motions, subpoenas, discovery, evidence, etc. These are legal decisions. It is a very bad idea for an administrative agency to employ individuals to act as judges who are clueless when it comes to understanding the law.

Chairman Alexander failed to understand the difference between direct and rebuttal testimony, failed to understand the significance of expert testimony, failed to understand that when an objection is made either to exhibits being introduced into evidence or to

testimony, a ruling is required to be made regarding the objection. A number of other examples could be given of his lack of understanding of basic legal principles.

A fundamental part of this whole process is having individuals who are adjudicating these hearing competent to make the decisions they are required to make. Not only was petitioner's due process rights substantially impaired, numerous other state employees appealing disciplinary action have been similarly damaged.

It is very important that this court consider this issue as it will have a direct impact on all administrative hearings throughout this county.

IV

THE NOTION THAT THE TRIER OF THE FACT IS ALWAYS IN THE BEST POSITION TO ASSESS THE CREDIBILITY OF THE WITNESSES AND CAN NOT ERR IN THEIR ASSESSMENT OF THE CREDIBILITY OF THE WITNESSES IS ABSURD. SHOULD THIS COURT AFFIRM PRIOR RULINGS REGARDING THIS ISSUE, MATERIAL ERRORS WILL CONTINUE TO GO UNCORRECTED

By February 29, 1996, the date of this petitioner's hearing before the Appeals Board, the Appeals Board had lost any sense of objectivity and where no longer able to evaluate the credibility of the witnesses in a fair, impartial and unbiased manner. As such, they were not in the best position of assess the credibility of the witnesses.

The trier's of the facts are human, subject to human frailties and as such, they make mistakes. These mistakes include erring in the assessment of the credibility of the witnesses. For anyone to suggest that the trier of the facts can not make a mistake in the

assessment of the credibility of the witnesses is in denial of basic human nature.

Often times, the trier of the facts erroneous assessment of the credibility of the witnesses is easily discernible from a close scrutiny of the record. Many times this can easily be accomplished by comparing testimony to exhibits in the record.

In this petitioner's hearing before the Appeals Board, a reasonable and prudent person could not and would not have ever given any credibility to the testimony of Mr. Ringo's supervisors.

The time has come for this Court to acknowledge that the triers of the facts are human and that they make errors in the assessment of the credibility of the witnesses.

V

THE APPEALS BOARD HELD THAT THE CIVIL RULES APPLY TO HEARINGS BEFORE IT. THIS RULING WAS AFFIRMED BY SUPERIOR COURT. THE APPLICATION OF THE CIVIL RULES HAS NO LEGAL BASIS AND LEADS TO ERRONEOUS LEGAL RULINGS

The Appeals Board granted the respondent's motion to quash petitioner's subpoenas in part because they held they were not personally served as required by CR 45(c). The Appeals Board made numerous other erroneous ruling regarding the petitioner's subpoenas. The result was material witnesses for the petitioner were precluded from testifying.

In a number of instances, their testimony would have proven that Mr. Ringo's supervisors willfully perjured their testimony with respect to material issues before the Appeals Board.

RCW 34.05.010(18), part of the Administrative Procedures Act (the Appeals is subject to this part of

the APA), states that service may be made by first class mail. RCW 41.64.110 states in part that the hearings before the Appeals Board are to be informal with technical rules of evidence not applying.

Petitioner served his subpoenas by first class mail, restricted delivery, return receipt. Service by first class mail was specifically authorized by statute. It is also consistent with very clear legislative intent that the hearings are to be informal.

The judiciary branch can not impose the civil rules upon administrative agencies in the executive branch as this would violate the separation of powers. As such, the only other legal basis for the application of the civil rules is for them to be specifically adopted by statute. In the State of Washington, the legislature has yet to do so. The Appeals Board can not adopt them for any reason because the civil rules by their very nature are formal and would be contrary to clear legislative intent that the hearings are to be informal.

Guidance from this Court as to whether the civil rules apply absent specific legislation would be most helpful.

VI

THE APPEALS BOARD QUASHED DON SWANSON'S SUBPOENA, IN PART, BECAUSE HE HAD ALLEGEDLY BEEN DENIED HIS WITNESS FEES

Don Swanson, the Liquor Control Board's auditor in Kelso, WA, was a material witness. He had the most experience of any of the Liquor Control Board's auditors.

Don Swanson was coerced to perjure himself on a Declaration under penalty of perjury that petitioner had refused to pay him his witness fees after he had made a demand for witness fees. At the time this

Declaration was signed, Don Swanson was still at home and had yet to show up to testify. The Appeals Board should have know that Don Swanson could not have been denied witness fees because there had been no performance on his part.

There have been a number of court rulings where it has been held that a witness is entitled to witness fees if they show up to testify, but are not actually ever called to the stand to testify. However, this petitioner knows of no ruling directly on point as to whether a witness is entitled to make a demand for witness fees when they are still at home and have to even show up to testify.

Guidance from this Court on this issue would be most beneficial.

VII

SUPERIOR COURT FAILED TO MAKE ANY RULING IF THE LACK OF ANY RULES OF EVIDENCE VIOLATES DUE PROCESS UNDER THE FOURTEENTH AMENDMENT

The Appeals Board has rules for motions, subpoenas, discovery, etc. They have rules for all the processes of a court trial, with one exception. The one exception is there are no rules of evidence. This is by statute - RCW 41.64.110.

As the statute is currently written, the Appeals Board has unlimited authority to allow into evidence all of the State's evidence, and preclude from evidence all of the appellant's evidence. The Appeals Board improperly allowed into evidence the Liquor Control Board's witness statements. In *Weyerhaeuser v. Pierce County* 873 P.2d 498 (1994) it was held that all documents prepared by government employees are subject to oral cross examination. Not a one of those

individuals who prepared a witness statement were at the hearing.

At the same time the Appeals the Appeals Board, although they allowed all of my exhibits in evidence, refused to give a single exhibit any consideration. They also refused petitioner the opportunity to give testimony regarding numerous defenses and other directly relevant issues.

A number of states have statutes similar to the statute of the State of Washington. Although most certainly the legislature has an absolute right to legislate that the hearings are to be informal, this Court should determine is such statutes passes muster with constitutional due process.

VIII

SUPERIOR COURT FAILED TO MAKE ANY RULING ON THE GROSS MISCONDUCT OF KELLY REESE, AAG. THE COURTS REFUSAL TO CONSIDER THE BLATANT MISCONDUCT OF THE AAG SENDS THE WORST POSSIBLE MESSAGE TO ATTORNEYS THAT THEY HAVE A RIGHT TO GO TO ALMOST ANY LENGTH TO ENSURE THAT THEIR CLIENT PREVAILS IN A LEGAL ACTION

The conduct of Kelly Reese, AAG, in her representation of the Liquor Control Board was horrendous. She first approved of my supervisors retaliating against petitioner and approved of them firing petitioner for their own incompetence and egregious misconduct. She then coerced Don Swanson to perjure himself on a Declaration under penalty of perjury that the had been denied his witness fees. She also removed from evidence material exhibits without informing the Appeals Board or petitioner, included on her witness list witness she never intended to call as witnesses, and subordinated perjured testimony.

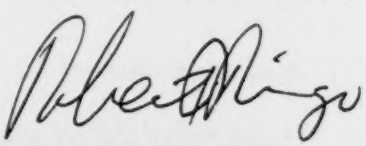
Kelly Reese is an attorney that desperately needs to be disbarred. Her actions deliberately denied petitioner a fair hearing mandate by constitutional due process.

If this Court grants this Petition for Writ of Certiorari, it is important that this Court also consider this issue. Far too many attorneys take inappropriate liberties with various statutes and/or the Bar's Code of Professional Conduct in a desperate effort to ensure that their client prevails in a legal action.

CONCLUSION

For the reasons given above, this petitioner prays that this Court will grant a writ of certiorari. Petitioner asks this Court to reverse his dismissal, reinstate him with full back pay with double damages as provided for in RCW 49.52.070 for the retaliation against petitioner for reporting wage and hour violations, and full back benefits. Petitioner also asks he be awarded all costs allowable pursuant to Rule 43.

Respectfully submitted,



Robert I. Ringo
Petitioner Pro Se
32158 Camino Capistrano #A468
San Juan Capistrano, CA 92675
No current phone number

November 23, 1999

Appendix A - 8/31/99 Decision of the Washington State Supreme Court Denying Mr. Ringo's Petition for Review

THE SUPREME COURT OF WASHINGTON

No. 67872-3
ORDER
C/A NO. 22040-7-II

ROBERT I. RINGO, PETITIONER
v.
WASHINGTON PERSONNEL APPEALS BOARD AND LIQUOR CONTROL BOARD,
Respondents,

Department II of the Court considered this matter at its August 31, 1999 Motion Calendar, and unanimously agreed

That the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied.

DATED at Olympia, Washington this 31st day of August, 1999.

/s/ Richard P. Guy, Chief Justice

Appendix B – 2/26/1999 COURT OF APPEALS, DIVISION II ORDER DENYING MOTION TO MODIFY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION II

No. 22040-7-II
ORDER DENYING MOTION TO MODIFY

ROBERT I. RINGO, APPELLANT
v.
LIQUOR CONTROL BOARD, RESONDENT

APPELLANT has filed a motion to modify Commissioner's ruling dated December 10, 1998 in the above-entitled matter. Following consideration, the court denies the motion. Accordingly it is

SO ORDERED.

DATED this 26 day of February, 1999

FOR THE COURT:

/s/ Bridgwater, CJ
CHIEF JUDGE

Robert I. Ringo
32158 Camino Capistrano #A468
San Juan Capistrano, CA 92675

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Appendix C – 12/10/98 Opinion and Order of Washington State Court of Appeals, Division II Affirming Order of Personnel Appeals Board

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

ROBERT I. RINGO, Appellant,
v.
WASHINGTON PERSONNEL APPEALS BOARD and LIQUOR CONTROL BOARD, Respondents

No. 22040-7-II

OPINION AND ORDER

Robert I. Ringo appeals a Thurston County Superior Court judgment affirming a Personnel Appeals Board decision that upheld the Washington State Liquor Control Board's dismissal of Ringo as a Liquor Control Auditor. This court has considered the matter pursuant to its own motion on the merits. RAP 18.14.

Ringo worked as a Liquor Control Auditor from June 1, 1989, until August 31, 1995. As the reason for Ringo's dismissal, the WSLCB cited his refusal to follow a corrective

<end of p. 1>

action plan established for him pursuant to a formal reprimand hearing on May 4, 1995. Specifically, the WSLCB asserted that Ringo (1) ignored his supervisor's directions to use computerized work papers to complete his audit reports; (2) refused to use the six-month audit period designated by the WSLCB to calculate inventory levels; (3) refused to follow the WSLCB's reimbursement policies; and (4) recorded eight hours of time that he did not work and refused to change his activity report thereafter. Ringo admitted the behavior alleged, but offered several arguments justifying it. As to the first allegation, he argued he was not required to use the computer because his supervisor did not. He said that the WSLCB's six-month period was inconsistent with good

accounting practices, and the reimbursement policies were contrary to statute. He argued that he was entitled to be compensated for eight hours of work on February 15, 1995, because there was a burglary audit in his territory that had to be done, and he was not permitted to do it.

The Board found that the WSLCB had established all of the alleged incidents of misconduct. It further determined that Ringo had neglected his duty, willfully violated agency rules and regulations, was insubordinate, and committed malfeasance and gross misconduct.

This court reviews the decision of the Personnel Appeals Board de novo, on the record made before the Board. *Adams v. Social & Health Servs.*, 38 Wn. App. 13, 14 (1984). In reviewing a factual decision by the Board, this court determines whether there exists in the record "any competent, relevant and substantive evidence which, *if accepted as true*, would within the bounds of reason, directly or circumstantially, support the challenged (findings)." *Ballinger v. Social & Health Servs.*, 104 Wn.2d 323, 328 (1985)

<end of p. 2>

(emphasis added). Thus, the reviewing court does not evaluate the credibility of witnesses appearing before the Board. *Gogerty v. Department of Institutions*, 71 Wn.2d 1, 8 (1967).

In reviewing a claimed error of law, the court may substitute its judgment for that of the administrative agency, but it accords substantial weight to the agency's view of the law. *Sullivan v. Department of Transp.*, 71 Wn.App. 317, 321 (1993), *review denied*, 123 Wn.2d 1018 (1994).

The Board defined insubordination as the refusal to comply with a lawful directive from a superior. Gross misconduct is flagrant misbehavior that adversely affects the agency's ability to carry out is functions. Malfeasance is the doing of an act that ought not to be done that interferes

Appendix C - 12/10/98 Opinion and Order of the Washington State Court of Appeals, Division II Affirming Order of Personnel Appeals Board

with the performance of an official duty. Ringo has not challenged these definitions. He makes two arguments essentially. First, he contends that the evidence was insufficient to support the Board's decision because the testimony upon which the Board relied was perjured. The short answer is that this court does not make credibility determinations. *Ballinger,* 104 Wn.2d at 328; *Gogerty,* 71 Wn.2d at 8. N1. The testimony of Ringo's supervisors, accepted as true, supports the Board's findings.

Ringo also argues that the Board erred in failing to accept his defenses to the allegations. This amounts to a claim that the Board acted arbitrarily and capriciously. The action of an administrative agency is arbitrary and capricious only if it is willful and unreasonable, in disregard of the facts or circumstances. *Sullivan,* 71 Wn.App. at 321.

N1 Contrary to Ringo's assertions, nothing in the record compels a finding that any witness was lying.

<end of p. 3>

This is not such a case. Ringo's "defense" to the first allegation was that he could not be required to use a computer if his supervisor was not using one. It was clear at the hearing that Ringo's supervisor was not doing the same work that he was. The Board was not bound to consider the supervisor's failure to use a computer. Ringo contends that he could not be required to use the six-month period designated by the Board to calculate inventory levels because it violated professional accounting standards. Neither his arguments, nor the documents he presented support this claim. He contends that the six-month period interferes with his ability to "analyze," but he does not explain how. The Board was not required to accept this argument. As to his failure to comply with reimbursement policies, Ringo contends that they are illegal. He bases this argument on

statutes and regulations that restrict deductions from the paychecks of state employees. In this case, the WSLCB presented substantial evidence that the vendors were independent contractors. N2. The Board was entitled to rely on that evidence. Ringo also challenged the validity of the contracts with the vendors, contending that they were the products of economic duress. The only evidence he presented to support this argument was that they had to be signed before the vendors could receive commissions. That is the nature of a contract. It has to be executed before the benefits can be realized. Finally, Ringo asserted that he was available to work; there was work to do, and he was entitled to be paid if his supervisors did not let him do it. The evidence was that the district manager determined the loss from the burglary at a time when Ringo was not available. None of

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N2 This evidence included a determination by the Internal Revenue Service that for tax purposes, the vendors were not employees, a subsequent determination by the WSLCB that they would not be treated as employees for any purpose, and contracts that said the vendors were not employees.

<end of p. 4>

the circumstances described by Ringo required the Board to rule in his favor. Its decision was based on tenable grounds. It was neither arbitrary nor capricious. Accordingly it is hereby

ORDERED that the judgment is affirmed.
DATED this 10th day of December, 1998.

/s/ signature illegible

EXHIBIT D -5/8/97 ORAL OPINION AND ORDER OF THURSTON COUNTY SUPERIOR COURT AFFIRMING PERSONNEL APPEALS BOARD

IN THE SUPRERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF THURSTON

No. 96-2-01600-1

ROBERT I. RINGO, PETITIONER
v.
STATE LIQUOR CONTROL BOARD, RESPONDENT

VERBATIM REPORT OF PROCEEDINGS
ORAL OPINION

BE IT REMEMBERED that on May 8, 1997, the above-entitled and numbered cause came on for hearing before JUDGE GARY R. TABOR, Thurston County Superior Court, Olympia, Wa.

APPEARANCES:

Robert I. Ringo, pro se

Michael P. Sellars,
Assistant Attorney General
Labor and Personnel Division
905 Plum St. SE, Building 3
Olympia, WA 98501

EXHIBIT D -5/8/97 ORAL OPINION AND ORDER OF THURSTON COUNTY SUPERIOR COURT AFFIRMING PERSONNEL APPEALS BOARD

THE COURT: In rendering a decision here today I want to make it clear that the Court does believe in following the rules. I want to state on the record that the role of this Court in reviewing the action of the Personnel Appeals Board and upholding the dismissal is not to substitute my independent judgment for factual issues, but rather to review the record to determine whether or not the facts as found by the Personnel Appeals Board are supported by substantial evidence.

I recognize that the statute uses the term "preponderance of the evidence" and that certainly is the test at the Personnel Appeals Board level. However, case law makes it clear that this Court is not to substitute its own determination of facts unless those facts have been determined in a way that makes them arbitrary and capricious. The definition of arbitrary and capricious, according to case law, is if no two minds, two reasonable minds could have disagreed on the issue. If two reasonable minds could disagree, them it is not arbitrary and capricious even if the reviewing court feels

<end of p. 2>

otherwise.

I think it appropriate also to indicate that as to questions of law this Court is in a position to interpret the law. Mr. Ringo, you pointed out that the Personnel Appeals Board, at least two of the three members, were not attorneys. You feel that they may not have understood the law. Well, this Court is tasked with looking at the law and interpreting it, although case law also says that an administrative body that has expertise in a particular area should be given some deference, that there should be substantial weight given to the administrative body's interpretation or administrative laws.

And finally, if there are issues that are mixed law and fact, this Court is to basically accept the facts unless they're

EXHIBIT D -5/8/97 ORAL OPINION AND ORDER OF THURSTON COUNTY SUPERIOR COURT AFFIRMING PERSONNEL APPEALS BOARD

clearly contrary to the Court's reading of the record and, again, apply the law. It is not this Court's role, however, to do a de novo review.

I state all those things because it's my perception, Mr. Ringo, that there are lots of things that you would like this Court to do. You mentioned a number of times in your argument and also in your briefing that you would like to see this Court right

<end of p. 3>

what you consider to be wrongs that have been committed against you. I want to make it clear that it is not this Court's function to direct the Liquor Control Board to do anything. That's not before this Court. Whether or not that was requested, even if it were highly appropriate, it would not be the role of this Court to do that. If I were to determine that you have been treated totally unjustly, this Court's recourse would be to remand the case back to the Personnel Appeals Board with instructions as to how to deal with the situation. You have entitled your appeal of this matter "Robert I. Ringo vs. the Washington Personnel Appeals Board and the Liquor Control Board." I just wish to point out that there may be some misunderstanding on your part.

When this Court makes a ruling in the matter, if that matter is appealed and goes up to the court of appeals, this Court is not a party to the issue, even if the Court made a mistake. Even if this Court determined the facts wrong or made legal decisions that were wrong, this Court is not a party to that lawsuit, the litigants are. But the appellate court can look back and direct this Court to do particular things, and that's the same as far as this Court reviewing what the Personnel Appeals Board did. They

<end of p. 4>

are not a party to this matter, although I understand that you feel that the Personnel Appeals Board did not perform their

duties in ways that they should have and you feel as a consequence you have been treated unfairly.

I'm going to cut to the chase. There are several ways the Court can render a decision, and while it appeals, perhaps, to the legal side of one's thinking to say we're going to of through this matter step-by-step and then we're going to render our decision because, after all, here's the bottom line. It has been my experience both as an attorney and as a judge that often that is almost punishment to the parties to have to sit an listen to all that without knowing where the court's going, so I'm not going to do that. I'm going to render a decision in just a moment. I want to say one other thing, however, before making my ruling.

This Court wishes that it had the wisdom of Solomon. I've said that before and I sometimes get some puzzled looks. Solomon was a wise man according to a number of sources that tell about Solomon's decision to split the baby, if you will. When the two women argued over whose child the baby was, he said, "We'll just split it," and the real mother

<end of p. 5>

said, "No, it would be better for the other person to have the child than for the child to be killed." The reason Solomon is so wise and is recognized as being wise, is because that logic is irrefutable. That logic is not something that anybody can argue with.

It's been the Court's experience that very few decisions carry that kind of wisdom, because in most every case when there is a hotly contested issue, reasonable minds could differ. Certainly people have strong opinions about things, and whatever the Court rules , there are going to be people that are unhappy in the usual case.

Someone has said that there's an ancient curse and that curse is, "May you be involved in a lawsuit where you think you are right." And when one thinks about that, I think the logic, the meaning of that is that when we feel we are right, it really doesn't matter what anyone else says. If we

EXHIBIT D -5/8/97 ORAL OPINION AND ORDER OF THURSTON COUNTY SUPERIOR COURT AFFIRMING PERSONNEL APPEALS BOARD

think we're right, the only true justice would be for someone to see things our way. That's not always the way things work in life. Oftentimes our strongly-held opinions must give way to interpretations by those who are tasked with making such determinations.

My ruling in this case is I'm going to uphold the Personnel Appeals Board decision which upheld

<end of p. 6>

your dismissal by the Liquor Control Board. It is not without a great deal of consideration of the facts in this case that I make that ruling.

First of all, this Court finds that there is substantial evidence to support the Board's finding. Mr. Ringo, I know you disagree, I know that you feel that there were many things that were unfair about the decision that was handed down. This Court has tried to filter through those things and understand your arguments as to what your think was unfair.

In this court's opinion many of the things that you felt were unfair had to do with issues that were not directly pertinent to the decision that he Board was making a decision on. The posture of this case was that there were allegations that you had neglected your duty, were insubordinate, had committed malfeasance, gross misconduct, or willful violations of published rules and policies of the department. Your defense to that was that this was really a side issue. The real issue was that you had made some people mad by standing up for what you believed was right and, as a result of that, that is why you were dismissed.

This Court does not weigh the credibility of witnesses because I heard no witness' testimony. The

<end of p. 7>

testimony that was offered in the record was considered by the Personnel Appeals Board, and they are the sole judges of the credibility of the witnesses. They made a reasoned

decision, which this Court can not disagree with, that there was ample evidence to support the allegations against you. You acknowledged that you had either done or not done many of the things that were alleged. Your defense was that you felt you had a right to refuse to do those things. I realize that's a strongly-held opinion.

I've looked at the Lowry case and I've considered the facts there as opposed to your particular facts. I see some distinctions. In the Lowry case there were clearly two opinions by the Attorney General's office which were in support of the position that was taken by Mr. Lowry in saying that it would be the unlawful practice of law, and he was not going to go against what he believed was a clear violation of the law.

In this particular case, from your standpoint, you believe that there were violations of, if nothing else, standards that a CPA would follow. I believe that there is some difference between a standard that is an ethical standard that is subject to some

<end of p. 8>

interpretation and a clear violation of the law.

It's unclear to this Court, and I will acknowledge that I am not a CPA nor do I understand all the rules and procedures that a CPA would follow, but it is clear to this Court that while you may have disagreed with the particular six-month period that you were told was to be a part of the audit, you were working for an agency which had a policy that said this is a six-month period you will use.

This Court believes that there were other procedures that you could have followed to make that known. You did, as I understand, take this to your immediate supervisors, but it appears to be a practice that is subject to at least some difference of opinion. It's this Court's opinion that you could have chosen to put as a footnote that the more appropriate six-month period would have been another and to show the difference.

EXHIBIT D -5/8/97 ORAL OPINION AND ORDER OF THURSTON COUNTY SUPERIOR COURT AFFIRMING PERSONNEL APPEALS BOARD

This Court's not aware of what differences there would have been in the way that you conducted your audit and the way the policies were set forth. I understand and I read your testimony and I looked at your letters that you had written that indicate that there would have been some inaccuracies, in your opinion, because of the difference in particular

<end of p. 9>

months that were used. But that is a matter of opinion, and that's really the heart of this matter in the Court's opinion.

You made a number of judgments which you certainly have a right to do. Mr. Ringo, you are obviously a very analytical person, you think very specifically about a lot of things, but it's clear to this Court that when you have made up your mind there's very little that anyone can say that will change your mind.

I think that one of the most obvious examples of that is your continuing to not file the computer-generated forms. You've stated in the record, you told the Personnel Appeals Board that the reason you didn't do that is because you didn't think it was being uniformly applied, number one, and number two, it took more time than you wanted to devote, and it also infringed upon the people out at the particular stores. But you were directed to do that. There was a reprimand and a corrective action procedure that was set forth that said you would do that. You still refused because you felt strongly about it.

The problem is that an employer has the right to set some standards. They may not be the only

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standards that can be followed, in some cases they may be wrong, but someone has to be able to make the decision and employees have to carry that out within, of course, reasonable bounds. In this Court's opinion your decision not

to carry that out was a subjective decision that you made and you stood by it, and it was wrong. It was wrong from the standpoint of the Liquor Control Board had the right to set the policy and your refusing to follow that policy was insubordination.

As to the situation out in Republic, I have some trouble understanding exactly the sequence that you arrive at your decision that his was asking you to do something that was against the law. Your opinion that such persons were employees rather than independent contractors, your feeling that the statutes do not allow the Liquor Control Board to take money out of persons' checks without them volunteering that, and I guess your belief that the contract was illegal.

One of the things that I note is you state that people that aren't CPA's can't understand all the ramifications and procedures that CPA's need to follow. You appear to feel very strongly that you can interpret the law in a way that an attorney might

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be required to interpret it. To find that a contract is illegal for lack of consideration or for any other reason is a legal conclusion. That, in this Court's opinion, and although I've not delved into that issue in great detail, is certainly questionable.

In any event, you chose to take a stand on that. But when one looks at this logically, what you did if you had a problem with that statute, you still carried through with requiring this person to pay the money. So if it was illegal to make them do it, you still required that anyway. You had the person write a check and pay for it. In any event, the result would have been basically the same if this individual had insufficient funds to pay the money. If you had been unable to collect that money, the agency would have simply docked the person's paycheck at some point as you admitted here today. It would have been either that month

or the next month, which is just the same as the person having to turn around after they receive their check and write a check for the amount. So I don't quite understand the whole posture why you took such a hard stand on that.

The final thing I want to say about that is you really had no standing to object to this contract in that it wasn't between you and the Liquor Control

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Board, it was between other people. Now, if you felt it was an inappropriate procedure, do you have a right to complain about it? Certainly. But in making such a complaint, either that complaint has to be dealt with to your satisfaction by the agency or you have to follow the agency's policy and practice.

As to the eight hours of leave, you had already scheduled to take the eight hours off. It's my understanding you said you had no comp time, but you would have been required to have dealt with that eight hours had the burglary not occurred. In that sense it would have been fortuitous that the burglary had occurred when it did had you been called to do the audit. There is no constitutional right to do a particular job, and it's your employer's choice whether or not you do that job or not. You certainly feel it was unfair. That 's really not the issue that this Court is looking at; whether it was unfair or not.

You were given an opportunity following that, you given several choices, and you could have exercised one of those choices. You refused to do so because you believed strongly in what you were doing. But in taking such a rigid stand, you were refusing to follow a policy, you were being difficult to deal

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with, and in your employer's opinion, you were insubordinate and this was misconduct.

EXHIBIT D -5/8/97 ORAL OPINION AND ORDER OF THURSTON COUNTY SUPERIOR COURT AFFIRMING PERSONNEL APPEALS BOARD

There are certainly many, many other issues, and I'm going to deal with a number of those issues by stating this Court does not find that there is sufficient legal basis for me to even address a number of the issues. I do wish to address a few of those, however.

One is having to do with the Board of Personnel Appeals having nonattorneys on the Board. You've not cited this Court to any authority which would require that. This Court's understanding of the law is that this was not a judicial function, it was an adjudicative function. It is quasi-judicial, it was adjudicative function. It is quasi-judicial, if you will, but those kinds of functions are performed by nonattoryneys in a variety of ways in this state. This Court sees those kinds of rulings all the time.

The rules of evidence are not to be strictly applied; however, I read with some direct attention the record in this case as to rulings that were made by the Board. This Court finds that overall their rulings were much the same as would have been made by a judge in most of the situations. There were times when the State objected to particular things, and

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your argument was accepted by the Board and the State's was denied. They made decisions which allowed you to present a great deal of evidence, certainly as has been pointed out by the number of exhibits you were allowed to present. In this Court's opinion the proceeding was a proceeding that allowed you to fairly present your position. That brings us to the subpoena issue.

This Court has taken some time to read the statutes in regard to subpoenas. I will point out that in RCW 34.05.010(18) that you point out that talks about service, it's a different kind of service. It doesn't say service of subpoenas. That's talking about service of other things. There's a more specific statute that deals with subpoenas.

The first problem is subpoenas, according to the rules regarding the Personnel Appeals Board, are to be served by the Board. And I understand you may have gotten some

bad advice by someone representing the Board, that is, the secretary or whatever, that you could just mail them out yourself. You chose to mail them because it would be less expensive.

This Court does not find that those subpoenas were properly served, number one, because they

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weren't sent out by the Board. Number two, a service by mail, unless someone agrees to that, is not sufficient service, according to the civil rules, and I believe the civil rules apply in this case. But most importantly even if that were not the case, you were not prejudiced by not calling witnesses because your purpose in calling witnesses was to deal with some issues that were not specifically germane to this case.

I recognize that you feel that people had said things that weren't true. You've accused people of lying. In following the rules of evidence a person who is a witness may not be impeached on collateral matters, except by a strict formula, and that strict formula, I'm not here to give a law school class, but that has to do with a person 's reputation in the community for truth and veracity. But if it's not directly dealing with an issue, a specific situation, that is, that issue I should say, impeaching them because they've told a lie in another situation or because of some bad act in another situation would not be the appropriate way to impeach their credibility.

I will state that I believe you did a really commendable job of representing yourself, Mr. Ringo

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at the hearing. I don't know that any attorney could have done a better job. You've done a good job here today in presenting your argument. Nevertheless, you had an uphill battle for a lot of reasons.

EXHIBIT D –5/8/97 ORAL OPINION AND ORDER OF THURSTON COUNTY SUPERIOR COURT AFFIRMING PERSONNEL APPEALS BOARD

It's my perception that you focused on some things that are not really what this Court is supposed to be looking at. You felt that there were injustices and you tried to focus on those, but in doing so, you did not directly address the issues that the Board was looking at, and that was those particular areas of alleged misconduct. Yes, reasonable minds can differ, you've had an explanation for each of those activities, although you acknowledge that the activities took place.

Finally, this Court wanted to address the issue of the constitutional violations and specifically what you've entitled double jeopardy or double punishment. This Court has spent some time looking a t the documents here to try to ascertain whether or not that occurred. In this Court's opinion it did not. While you were clearly reprimanded for not filing the computer forms and not complying with the particular six-month period for audit, there was corrective action ordered, and the

<end of p. 17>

ultimate violation alleged before the Personnel Appeals Board was that even after being given that corrective action directive, if you will, you refused to follow it. That's not the same behavior.

As to the other alleged acts of misbehavior, and I guess this Court is finding that there is sufficient evidence that those acts were misbehavior, that numbers two and three regarding the Republic situation and number four involving the claiming of eight hours of work that you did not actually work, this Court finds that you were not previously reprimanded for that. Although there were letters addressing the issue, those letters did not impose sanctions on you. They were corrective in nature in the hopes that you would see and correct your behavior. You were given an opportunity to correct the eight-hour situation at the Laudermill hearing. At that time you were given an opportunity to take one of several options and you chose not to do so.

EXHIBIT D –5/8/97 ORAL OPINION AND ORDER OF THURSTON COUNTY SUPERIOR COURT AFFIRMING PERSONNEL APPEALS BOARD

I've read each and every case that was cited. Well, I should qualify that. I guess there were a couple federal cases that were cited in the State's brief, and I think there was a United States Supreme Court case cited in your brief that I did not

<end of p. 18>

specifically read. However, other than that I have a stack of cases from both sides that were cited. I've read all the cases that I copied off, tried to consider very carefully all the alleged errors regarding constitutional violations or errors of law. As I said at the outset, I'm probably not going to change anybody's mind; I don't' have the wisdom of Solomon.

It would be my hope, Mr. Ringo, that I'm not added to the list of people that you feel have willfully, and you've used that term about a number of people, have willfully deprived you of your rights. To put that in perspective, and it's certainly your right to have any opinion you want about this Court or anything else that's done, but in looking back over things you felt that a number of people in the Liquor Control Board acted inappropriately. You felt that people at the Personnel Appeals Board acted inappropriately. You feel, and from your arguments both in the briefs and orally, that member of the Internal Revenue Service acted inappropriately. You believe that members of the Attorney General's office acted inappropriately. You believe that members of the State Auditor's office in performing a review of your whistle-blower

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complaint acted inappropriately.

Now, this Court has made a review, which I'm sure is one that you're unhappy with from the standpoint that you wished that the Court would have ruled otherwise. But I can't control what you think or what you feel, except to say that this country is founded upon the principle that a person has

a right to a fair hearing. It would be my hope that you believe that you received that fair hearing regardless of whether or not you disagree with the outcome.

But I would point out that the matter does not stop here. If this Court is wrong, there are procedures by which this Court's action can be reviewed as well. I'm not saying that you should or should not do so. But I'm saying that that is out justice system. Our system works to see that justice is ultimately done. Is it a perfect system? No, injustice is done; I'm sure that that occurs. But when one really considers what the system is, the system aimed to do justice really does justice when a matter is fully and fairly considered and a decision is rendered that is based upon the findings of the facts as compared to the law. That's what this Court has tried to do today.

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There is, thankfully, a specific case that indicates that when findings of fact and conclusions of law have been handed down by an administrative agency, the Superior Court need not hand down such findings and conclusions. I have not prepared and would not have prepared prior to hearing argument, in any event, any written findings in this particular case. However, my words are being taken down and they are part of the record. At some point their needs to be an order that would be entered that memorializes this Court's ruling. This order need not set forth findings and conclusions, however, as I've already stated.

I take it that the Stcte as the prevailing party at this point does not have such an order/

MR. SELLARS: Your Honor, we do have just a blank order which just says in the event that you ruled in the way you did that the personnel Appeals Board decision is affirmed, and I can show it up to you and I can show a copy to Mr. Ringo.

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THE COURT: Would you first give that to Mr. Ringo and let him consider that? I'll hear whether or not he has any objections to such an order.

MR. SELLARS: Would you like me to hand you up a copy?

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THE COURT: Please.

Mr. Ringo, I'm not asking whether or not you agree or disagree with the order, because obviously you disagree with what the ultimate decision of the Court was. The question here is whether or not you agree that this order is appropriate as to form.

MR. RINGO: No, I don't agree with it because there was a number of issues and I think that those issues should be addressed in the order regarding the subpoenas and so on and so forth.

THE COURT: Well, as I've indicated, I understand the case authority to be that I need not set forth specific findings and conclusions in that I am upholding the decision by the Personnel Appeals Board.

As to this Court's decision as to any particular issue that was raised by you, I've not addressed some of the issues specifically and I don't believe that I need to do so. Nevertheless, if you wish to prepare an order that states what the Court has said on the record, I'll allow you time to propose such as order, and then there can be a time when that's presented to the Attorney General's office, be reviewed by them. If that is agreed, then it can be presented to the court ex parte. If

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there's not an agreement, we would need to set this matter on for a hearing entitled presentation of order. That's really up to you.

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MR. RINGO: Well, Your Honor, I don't have a computer on my own to take of a considerable length of time, so I guess we have no choice but to go with this one.

THE COURT: Well, Mr. Ringo, let me indicate that it's not this Court's desire to in any way take advantage of you. I don't believe that in entering this order we would in any way be doing that. You're not precluded from arguing any particular error that you with if this matter foes any further.

MR. RINGO: Your Honor, I fully intend to appeal. You've done an original determination on this or is this it?

THE COURT: This would be the order. And in light of your comments, I am going to sign this order, date it today, which is the 8th of May, and I will indicate that you did have some objections to the form but did not wish to prolong this matte, and you've indicated that you do wish to appeal this Court's decision. Obviously you need to proceed in an appropriate fashion. Simply stating on the record that you wish to appeal, as you're probably aware, is

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not sufficient. I'm not going to give you any legal advice as to what you should or shouldn't do, but if you wish to appeal you do have the right to do that, and you'll want to proceed in an appropriate way.

With that, then, court's in recess.

EXHIBIT E – 4/2/96 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF PERSONNEL APPEALS BOARD AFFIRMING MR. RINGO'S DISMISSAL

BEFORE THE PERSONNEL APPEALS BOARD
STATE OF WASHINGTON

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

CASE No. DISM-95-0051

ROBERT I. RINGO, APPELLANT
v.
LIQUOR CONTROL BOARD, RESPONDENT

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, CHARLES ALEXANDER, Chair; NORA REYNOLDS, Vice Chair; and ART WANG, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on February 29, 1996.

1.2 **Appearances.** Appellant Robert I. Ringo represented himself pro se. Respondent Liquor Control Board was represented by Kelly Reese, Assistant Attorney General.

II. SUMMARY

2.1 **Facts.** Appellant Robert I. Ringo was a Liquor Control Auditor for respondent Liquor Control Board. He refused to follow directives to use computerized work papers when calculating inventories and to use a standardized six-month period. He also refused to follow reimbursement procedures requiring liquor vendors to pay shortages at the conclusion of an audit. Appellant had been scheduled not to work on a specific date, then was directed not to conduct an

audit on that date because the audit had already been done by a district manager. He claimed eight hours work for that date with the notation that he had been ordered not to work.

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2.2 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, insubordination, malfeasance, gross misconduct, and willful violation of agency reimbursement policy. Appellant was disciplined for failing to follow a corrective action plan mandating that he follow standard audit procedures, for extending credit to a liquor vendor after an audit, and for recording eight hours of work on a day when Appellant did not work.

2.3 **Summary of Appellant's Argument.** Appellant contends that this was "one of the most egregious terminations in the history of the state and should be overturned immediately". Appellant contends that he is not at fault and that the agency's policies, procedures, and vendor contracts violate state law. He contends that Respondent ordered him to violate his professional standards as a certified public accountant.

2.4 **Summary of Respondent's Argument.** Respondent contends that Appellant admitted refusal to follow procedures constituted misconduct warranting dismissal.

2.5 **Primary Issue.** Whether Appellant's admitted refusal to follow procedures constituted misconduct warranting dismissal.

EXHIBIT E – 4/2/96 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF PERSONNEL APPEALS BOARD AFFIRMING MR. RINGO'S DISMISSAL

2.6 **Citations Discussed.** WACs 358-30-160, 358-30-120, 358-30-130, and 358-30-170; CR 45; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Countryman v. Dep't of Social & Health Services, PAB No. D94-025 (1995); Parramore v. Dep't of Social & Health Services, PAB No. D94-135 (1995); Rainwater v. School for the Deaf,

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PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Servies, PAB No. D93-053 (1994); Aquino v. University of Washington, PAB No. D93-163 (1995).

2.7 **Summary of Board's Decision.** At the beginning of the hearing, the Board granted Respondent's motion to quash, pursuant to WAC 358-30-160, several subpoenas and subpoenas duces tecum issued by Appellant. Subpoenas issued by a non-attorney shall be signed and issued by the Personnel Appeals Board, shall be personally served, and shall provide for the tendering of witness fees where appropriate upon demand. WAC 358-30-120; 358-30-130. CR 45 provides the requirements for personal service of subpoenas. Appellant simply ignored the various requirements. The Board modified the subpoenas duces tecum of two of Respondent's employees, both of whom were present, to require production of relevant documents

Appellant refused to follow the corrective action plan to use standardized computer work papers and time periods. This constituted neglect of duty and insubordination.

EXHIBIT E – 4/2/96 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF PERSONNEL APPEALS BOARD AFFIRMING MR. RINGO'S DISMISSAL

Appellant refused to follow Respondent's reimbursement policy and liquor vendor contracts by lending credit and delaying collection of a shortage. This constituted neglect of duty, malfeasance, gross misconduct, and a willful violation of the agency manual. The Board need not determine whether violation of the liquor vendor contract also constitutes a willful violation of rules.

Appellant recorded eight hours of work on a date when he did not work and refused to make a schedule adjustment. This constituted neglect of duty, gross misconduct, and insubordination.

Appellant was given numerous chances to change his conduct, but failed or refused to do so. Dismissal is the appropriate sanction.

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2.8 **Conclusion.** The appeal should be denied.

III. FINDINGS OF FACT

3.1 Appellant Robert I. Ringo was a Liquor Control Auditor and a permanent employee for the Respondent Liquor Control Board. Appellant had been employed by Respondent since 1989. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on August 29, 1995.

3.2 By certified letter dated August 11, 1995, James E. Hoing, Assistant Director of Administrative Services for the Liquor Control Board, dismissed Appellant, effective August 31, 1995, for alleged neglect of duty, insubordination, malfeasance, gross misconduct, and

willful violation of published employing agency or Department of Personnel rules or regulations.

3.3 The Specific allegations leading up to the charges set forth in the disciplinary letter are:

1. You committed an act of neglect of duty and insubordination when you failed to comply with the corrective action plan given to you in a formal reprimand date May 4, 1995. The corrective action plan directed you to use computerized work papers, including appendices A&B, to complete your audit report and to calculate inventory levels using the designated six (6) month period which ends in September.

2. You committed an act of neglect of duty, gross misconduct and willful violation of Reimbursement Policy contained in the Agency Manual of Policies and Procedures and the Agency Contract with Liquor Agency Vendors when you extended credit to the Manager of Liquor Agency #526, Republic after an inventory shortage was discovered during an audit of the agency on March 31, 1995. After the audit was completed, you allowed the Agency Manager to wait until she received her

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paycheck on April 10, 1995 before she wrote a check to the Board to cover the audit shortage of $461.29. You held up the audit report until you received the manager's check and then mailed the check to Olympia. The check was received in Olympia on April 19, 1995, twenty days after the audit.

EXHIBIT E – 4/2/96 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF PERSONNEL APPEALS BOARD AFFIRMING MR. RINGO'S DISMISSAL

3. You committed an act of gross misconduct and malfeasance when you extended credit to the same Republic Agency Manager, described in paragraph two, and by not submitting your audit report until the shortage was paid. Extending credit to the Agency Manager exceeds the level of responsibility of your position as a Liquor Control Auditor. This action represents an incorrect accounting of Liquor Board funds and constitutes an act of malfeasance and gross misconduct on your part.

4. You committed an act of neglect of duty, gross misconduct, and insubordination when you recorded eight (8) hours as time worked on February 15, 1995 on your activity report when in actuality, you did not work on that day. You were compensated for the eight (8) hours on March 10, 1995 as time worked rather than as schedule adjustment.

(Exh. R-1).

3.4 The parties stipulated to the following facts:

1. Robert Ringo allowed Agency Manager of Agency #526 to provide payment to the Liquor Control Board twenty (20) days after the audit which occurred on March 31, 1995.

2. Robert Ringo submitted audit report regarding audit of Agency #526 twenty (20) days after the audit, March 31, 1995, on April 19, 1995.

3. Robert Ringo recorded eight (8) hours as worked, which he did not actually work.

EXHIBIT E – 4/2/96 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF PERSONNEL APPEALS BOARD AFFIRMING MR. RINGO'S DISMISSAL

3.5 Robert Schulhauser, Appellant's immediate supervisor, directed Appellant to use computerized work papers when calculating inventories and to calculate inventory levels using the Liquor Control Board's specified six-month period. Appellant was the only Auditor under Schulhauser's supervision who was not using the computerized work papers and the appropriate six-

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month period . In addition, Schulhauser was receiving a number of complaints from vendors concerning Appellant's professional behavior during the audit process. (Exh. R-15). Schulhasuer had discussed these issues with Appellant during one-on-one counseling, in a written memorandum (Exh. R-13), and through performance evaluations (Exh. R-3), in an effort to assist Appellant in complying with agency policies and procedures. Appellant refused to follow the directions given by Schulhauser. (Testimony of Schulhauser.)

3.6 James Hoing discussed Appellant's lack of compliance with agency policies, both with Appellant's supervisor and, on at least one occasion, with Appellant. He also had a personal telephone encounter with Appellant concerning an emergency audit due to a break-in of Liquor Agency #589. The district manager had been assigned the post-break-in audit task rather than Appellant. After Specifically directing Appellant not to do the audit, concurrence on Appellant's part was achieved only after

Hoing made it clear that he was giving a direct order that Appellant was not to do the audit and that the subject was not open for further discussion. Appellant did not violate the direct order, but he did submit an activity report claiming eight hours of work even though he did not do the audit or work with any other agency on that day. Appellant should have charged the eight hours as a schedule adjustment. (Testimony of Hoing.)

3.7 Appellant admits that the charges are true, but claims that he is not at fault. He asserts that the agency's policies, procedures, and vendor contracts violate state law and that Respondent had ordered him to violate his professional standards as a certified public accountant. Appellant claims he tried to bring the agency into compliance with the laws and professional standards, but that Respondent did not incorporate his suggestions appropriately. Appellant contends that because Respondent was motivated by jealousy, envy and defensiveness, it responded to his suggestions for Respondent's improvement by dismissing him from his position.

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3.8 Appellant was directed to use computerized work papers and follow the specified six-month period. This directive was confirmed in the corrective action plan issued by James E. Hoing, Assistant Director for Administrative Services. (Exh. R-4, p. 60). Appellant admits he refused to use the computerized work papers or follow the specified six-month period.

EXHIBIT E – 4/2/96 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF PERSONNEL APPEALS BOARD AFFIRMING MR. RINGO'S DISMISSAL

3.9 The agency manual provides: "6. Reimbursement. The Board cannot extend credit, therefore, reimbursement for shortages or overages must be made at the completion of an audit. a Shortages of $20.00 or more will be paid to the Board by check at the conclusion of the audit." (Exh. R-6). In addition, the contract with liquor vendors provides: "Any operating shortages verified by formal audit shall be paid at the time of audit." (Exh. R-7).

3.10 Appellant admits that he did not follow these reimbursement procedures. He argues that Respondent's policy violates WAC 296-126-025, which limits deductions from employee wages. He acknowledges that the Internal Revenue Service, Respondent, the office of the Attorney General, and the contracts themselves all have determined that the liquor vendors are not employees, but he claims, without offering any evidence, that these interpretations are all wrong and that the contracts are invalid.

3.11 Philip Loe, a former auditor for Respondent, offered his opinion that internal auditors should not assume operational responsibility by collecting funds. However, the issue here was the timing of when Appellant collected the funds.

3.12 Appellant attended a staff meeting on February 14, 1995, when a burglary occurred in a store which Appellant would normally audit. A district manager was assigned to the site instead. A

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disciplinary hearing for Appellant had been scheduled for February 15, 1995, but the date was changed. Appellant had been scheduled not to work on February 15. After the

hearing was canceled, Appellant was directed not to conduct the audit, since the audit had already been done. In his activity report for the month, Appellant claimed eight hours for February 15, with the notation "Ordered by Hoing not to work." Appellant refused to adjust his schedule for the eight hours claimed. (Exh. R-12).

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 In determining whether a sanction imposed is appropriate, consideration must be given to the facts and circumstances, including the seriousness and circumstances of the offenses. The penalty should not be disturbed unless it is too severe. The sanction impose should be sufficient to prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the program. An action does not necessarily fail if one cause is not sustained unless the entire action depends on the unproven charge, Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

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EXHIBIT E – 4/2/96 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF PERSONNEL APPEALS BOARD AFFIRMING MR. RINGO'S DISMISSAL

4.4 Neglect of duty is established when it is shown that an employee has a duty to is or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.5 Insubordination is the refusal to comply with a lawful order or directive given by a superior and is defined as not submitting to authority, willful disrespect, or disobedience. Countyman v. Dep't of Social & Health Services, PAB No. D94-025 (1995).

4.6 Malfeasance is the commission of an unlawful act, the act of doing what one ought not to do, or the performance of an act that ought not to be done, that affects, interrupts, or interferes with the performance of official duty. Parramore v Dep't of Social & Health Services, PAB No. D94-135 (1995).

4.7 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

4.8 Willful violation of published employing agency or institution or Personnel Resources Board rules or regulations is established by facts showing the existence and publication of the rules or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAAB No. D9-053 (1994).

4.9 Although it is not appropriate to initiate discipline based on prior formal and informal disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No. D93-163 (1995).

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4.10 As a preliminary matter at the beginning of the hearing, Respondent moved to quash, pursuant to WAC 358-30-160, a series of subpoenas and subpoenas duces tecum issued by Appellant. Subpoenas issued by a non-attorney shall be signed and issued by the Personnel Appeals Board, shall be personally served, and shall provide for the tendering of witness fees where appropriate upon demand. WAC 358-30-120; 358-30-130. CR 45 provides the requirements for personal service of subpoenas. Appellant simply ignored the various requirements. The subpoenas were improperly issued and invalid because they were never presented to or signed by the Board. At least one witness never received a subpoena and one other witness was denied his request for witness fees. Appellant admits that he did not personally serve any of the witnesses because certified mail was cheaper. Moreover, some of the proposed witness testimony and documents subpoenaed were simply not relevant to the issues before the Board.

The Board granted Respondent's motion to quash the subpoenas of Martin Mitchell (who never received even an invalid subpoena), Don Swanson (who was denied his request for witness fees). Joe McGavick (who was no longer employed by Respondent), and the subpoena and subpoena duces tecum of Linda L. Sheler (who was employed by the State Auditor). The Board denied the motion and modified the subpoenas duces tecum of Carrie Roundy and Robert Schulhauser, both of whom were present, to require production of relevant documents.

4.12 Respondent met its burden of proof that Appellant refused to follow the corrective action plan to use standardized computer work papers and time periods and that this constituted neglect of duty and insubordination.

<end of p. 10>

EXHIBIT E – 4/2/96 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF PERSONNEL APPEALS BOARD AFFIRMING MR. RINGO'S DISMISSAL

4.13 Respondent met its burden of proof that Appellant refused to follow Respondent's reimbursement policy and liquor vendor contracts by lending credit and delaying collection of a shortage and that this constituted neglect of duty, malfeasance, gross misconduct, and a willful violation of the agency manual. We need not determine whether violation of the liquor vendor contract also constitutes a willful violation of rules.

4.14 Respondent met its burden of proof that Appellant recorded eight hours of work on a date when he did not work and refused to make a schedule adjustment and that this constituted neglect of duty, gross misconduct, and insubordination.

4.15 Appellant was given numerous chances to change his conduct, but failed or refused to do so. Dismissal is the appropriate sanction.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Robert I. Ringo is denied.

DATED this 2nd day of April, 1996.

WASHINGTON STATE PERSONNEL APPEALS BOARD
/s/ Charles Alexander, Chair
/s/ Nora Reynolds, Vice Chair
/s/ Art Wang, Member

<end of p. 11>

EXHIBIT F – NOTICE OF APPEAL TO THURSTON COUNTY SUPERIOR COURT

ROBERT I. RINGO, PETITIONER

v.

WASHINGTON STATE LIQUOR CONTROL BOARD, RESPONDENT

No. 96-2-01600-1

THURSTON COUNTY SUPERIOR COURT

Argued / Decided May 8, 1997

PRIOR HISTORY: On appeal from the Washington State Personnel Appeals Board, Olympia, WA.

COMES NOW Robert I. Ringo, seeking judicial review of the Personnel Appeals Board decision affirming the Liquor Control Board's dismissal of my employment as an auditor.

I. FACTS:

1. I was employed by the Liquor Control Board as an auditor from June 1, 1989 – August 31, 1995.

2. My employment with the Liquor Board was terminated August 31, 1995.

3. I filed a timely appeal with the Personnel Appeals Board.

4. RCW 41.64.100 requires the appeal to be heard and a decision rendered within ninety days of when the appeal is first received by the Personnel Appeals Board.

5. RCW 41.64.120(1) requires the Personnel Appeals Board's decision to be made within 30 days of the hearing.

6. I objected to the Personnel Appeals Board's decision to hear my appeal approximately 180 days after it was received.

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7. The Personnel Appeals Board is subject to the Administrative Procedures Act – Chapter 34 of the Revised Code of Washington.

8. The petitioner is a certified public accountant whose CPA certificate is current.

<end of p. 1>

9. The Personnel Appeals Board granted the respondents motion to quash my subpoenas.

10. During 1992/1993 (7/1/92 – 6/30/93) and 1993/1994 (7/1/93 – 6/30/94) the Personnel Appeals Board heard 49 appeals involving dismissals. During that time period the Personnel Appeals Board did not reverse a single dismissal.

11. RCW 34.05.220(2) requires the Personnel Appeals Board to make available for inspection all final orders, decisions, and opinions.

12. I requested, over the phone, of the Personnel Appeals Board the right to inspect all final orders, decisions and opinions regarding dismissals for 1994/1995 and 1995/1996 (to date). This request was denied.

13. Charles Alexander, Chairman, and Nora Reynolds, Vice-Chairman, are not members of the Washington State Bar.

14. RCW 41.64.110 requires the Personnel Appeals Board to furnish me a copy of the transcript several times from the Personnel Appeals Board. I. Have yet to receive a copy of the transcript.

EXHIBIT F – NOTICE OF APPEAL TO THURSTON COUNTY SUPERIOR COURT

II. GROUNDS FOR RELIEF (SUMMARY OF ARGUMENTS):

A. The Personnel Appeals Board's decision is contrary to the preponderance of the evidence:
   1. My duty was to comply with state statutes.
   2. My duty was to comply with professional auditing standards.
   3. Liquor Control Board policies are contrary to state statutes and professional auditing standards.

B. The case was materially affected by unlawful procedures, as follows:
   1. Chairman Charles Alexander, and Vice-Chairman Nora Reynolds are engaged in the unauthorized practice of law. This is a violation of RCW 2.48.170.

   2. Chairman Charles Alexander during the course of the testimony stated that I had to prove that the charges were not true. WAC 358-30-170 states that the burden of proof is with the appointing authority (the respondents).

   3. During 1992/1993 and 1993/1994 the Personnel Appeals Board did not reverse any dismissals. By defacto, the Personnel Appeals Board has shifted the burden of proof from the respondent the appellant. WAC 358-30-170 states that the burden of proof is with the appointing authority

<end of p. 2>

(the respondent).

   4. The Personnel Appeals Board made several willful misrepresentations of material facts in their findings of facts. This is a violation of RCW 9A.80.

   5. The subpoenas I issue were improperly quashed. RCW 34.05.010(18) .

EXHIBIT F – NOTICE OF APPEAL TO THURSTON COUNTY SUPERIOR COURT

6. My hearing before the Personnel Appeals Board was held on February 29, 1996 – approximately 180 days after the Personnel Appeals Board first received my appeal. This is a violation of RCW 41.64.100.

7. The Personnel Appeals Board issued their decision on April 2, 1996, more than 30 days after the hearing was held. This is a violation of RCW 41.64.120.

8. During the course of the hearing both James E. Hoing, the appointing authority, and Robert E. (Bob) Schulhauser, my immediate supervisor, perjured themselves. This is a violation of WAC 358-30-100.

9. I requested a copy of the transcript from the Personnel Appeals Board. My request was denied. This is a violation of RCW 41.64.110.

10. I was fired, in part, for reporting a wage and hour violation.

11. The respondent's witness statements were improperly allowed into evidence. I was not given the opportunity to cross examine the witnesses. The right to cross examine witnesses is specifically afforded in RCW 41.64.110 and WAC 358-30-030 (3).

12. The Personnel Appeals Board denied me the opportunity to have meaningful cross examination. This violated RCW 41.64.110 and WAC 358-30-030(3).

13. Robert Schulhauser unlawfully discriminated against those on the Liquor Control Board's audit staff who are certified public accountants. This violated the intent of RCW 49.06.210.

C. The decision was based on violations of constitutional principles:

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1. The respondents witness statements were improperly allowed into evidence. I was not given the opportunity to cross examine these witnesses. This violated the due process clause of the fifth amendemnt of the United States and Article 1, Section 3 of the Washington State Constitution.

<end of p. 3>

2. RCW 41.64.110 states in part that the technical rules of evidence shall not apply. This violates the due process clause of the fifth amendment of the United States Constitution and Article 1, Section 3 of the Washington State Constitution.

3. The Liquor Control Board held me to different standards than the other auditors. This violated the equal protection clause of the fourteenth amendment to the United States Constitution.

4. The Liquor Control Board was negligent in their supervision and retention of James Hoing and Robert Schulhauser. The Personnel Appeals Board denied me the opportunity to introduce into evidence any testimony with respect to this issue. This violated the due process clause of the fifth amendment of the United States Constitution and Article 1, Section 3 of the Washington State Constitution.

5. Correspondence from myself to my supervisors and Liquor Control Board management was strictly protected by the first amendment to the United States Constitution.

6. My immediate supervisor had previously written me a letter of reprimand for several of the alleged

infractions. I can not be punished twice for the same alleged infractions. The Personnel Appeals Board has previously ruled in *Lebhart v. Washington State Patrol*. The Personnel Appeals Board allowed me to be punished twice for the same alleged infractions also violates the fifth amendment of the United States Constitution. It also violates Article 1, Section 9 of the Washington State Constitution.

D. The decision of the Personnel Appeals Board is incorrect because it is founded on errors in the construction and application of laws, as follows:

1. The Personnel Appeals Board, in support of its decision, relied on Personnel Appeals Board decisions from 1994/1995 and 1995/1996 (to date). This denies the fairness doctrine for the Personnel Appeals Board to rely on decisions which the Personnel Appeals Board had previously denied me access to such decisions.

2. The Personnel Appeals Board only allowed into evidence Liquor Control Board management's version as to why I was fired. This violates the fairness doctrine.

3. The Liquor Control Board did not comply with its own personnel policies and procedures before terminating my employment. It violates public

<end of p. 4>

policy for the Personnel Appeals Board not to require the Liquor Control Board to first comply with its own personnel policies and procedures as a prerequisite to terminating my employment.

4. The Personnel Appeals Board improperly excluded relevant testimony. This violates the fairness doctrine.

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III. ARGUMENTS:

A. The Personnel Appeals Boar's decision was contrary to the preponderence of the evidence.

1. The first part of the the first reason on the August 11, 1995 dismissal letter was that I would not use the computer for certain audits.
   A. My immediate supervisor, Bob Schulhauser, under no circumstances would use the computer himself to generate the Appendix A's & B's (The financial statements). The respondents did not introduce into evidence any exhibits to prove beyond a reasonable doubt that Bob Schulhauser in fact wanted the computer used to generate Appendices A's & B's.
   B. The appellant introduced into evidence a number of exhibits which proved that Bob Schulhauser would not use the computer himself to generate Appendices A's & B's. This is prima facie evidence that preparing the Appendices A's & B's manually was acceptable, despite Bob Schulhauser's testimony to the contrary.
   C. If Bob Schulhauser in fact wanted the computer used to generate the Appendices A'' & B'', he had a duty to do work in the same manner in which he ordered his staff to do work.
   D. The respondents claimed that they were concerned about complaints filed against me. Yet, using the computer to generate the Appendices A's & B's generated unwarranted complaints from store managers.
   E. The respondents did not enter into evidence the Appendices A's & B's in question. Instead they relied on the testimony of my supervisors. This did not comply with the best evidence rule.

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2. The second part of the first item in the August 11, 1995 dismissal letter was that I did not use the six months ended September 30th to calculate inventory levels.
   A. Limiting the calculation of inventory levels to the six months ended September 30th violates Section 420 of the Standards for the Professional Practice of Internal Auditing as promulgated by the Institute for Internal Auditors.
   B. The respondents offered no evidence at all that restricting the calculation of inventory levels to the six months ended September 30ths complies with professional auditing standards.

   <end of p. 5>

   C. The Personnel Appeals Board completely ignored all evidence that the respondents willfully violated professional auditing standards and the Liquor Control Board's Financial Manual.

3. The second and third charges relate to allowing an agency manager to pay an audit shortage several weeks after the audit was completed.
   A. The collection of the audit shortages violates WAC 296-126-025.
   B. The collection of the audit shortages violates Section 120 (.02)(.4) of the Standards for the Professional Practice of Internal Auditing.
   C. The agency manager was an employee, not an independent contractor as the respondents assert.
   D. The contract between the Liquor Control Board and the Liquor Board's agency managers is not a valid legal contract.
   E. The agency manager did not have the funds to pay the audit shortage on March 30, 1995

audit because of an immediate prior violation of RCW 9A.82.045 (A Class C Felony) by Liquor Board management.

F. My allowing the agency manager to pay the audit shortage after she received her next paycheck was a one time only incident precipitated solely by Liquor Board management's own actions.

G. Liquor Board management's insistence on deducting the audit shortage from the manager's April 10, 1995 paycheck without her consent would have violated RCW 49.48.010.

H. My duty was to comply with state statutes and professional auditing standards.

4. The fourth charge was that I improperly charged eight (8) hours of time to the Liquor Control Board on February 15, 1995 when I did not actually work that day.

A. I was a full time salaried employee. I was available for work that day and wanted to work that day. As such, the Liquor Board had a duty to provide me eight hours of work that day.

B. My not working on February 15, 1995 was solely the result of Jim Hoing willfully refusing to comply with the Liquor Board's Financial Manual and burglary audit procedures. Jim Hoing owed me a duty to comply with the Liquor Board's Financial Manual and burglary audit procedures.

C. Jim Hoing deducting eight (8) hours of annual leave from my July 25, 1995 pay voucher without my consent violated RCW 49.48.010.

D. Being that my supervisors refused to provide me any work for the day, and that they willfully violated the Liquor Board's Financial Manual and burglary audit procedures, it was proper for me to charge eight

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<end of p. 6>

(8) hours of time to the Liquor Board even though I did not actually work that day.

5. The preponderance of the evidence was that my firing was solely in retaliation for my blowing the whistle on my supervisors and Liquor Board management for their willful violations of personnel procedures, willful violations of statutes, willful and repeated violations of professional auditing standards, and for my supervisors willfully lying.

B. The hearing was materially affected by unlawful procedures as follows:
   1. Charles Alexander, Chairman, and Nora Reynolds, Vice-Chairman, are engaged in the unauthorized practice of law.
      A. Neither Charles Alexander nor Nora Reynolds are attorneys or members of the State Bar. The State Bar confirmed that Charles Alexander and Nora Reynolds are not members of the State Bar.
      B. Both Charles Alexander and Nora Reynolds are making decisions regarding motions, subpoenas, discovery and rules of evidence.
      C. The practice of law includes those acting in a judiciary capacity.
      D. RCW 2.48.170 requires that those making legal decisions to be members of the State Bar.
      E. Charles Alexander and Nora Reynolds lack of knowledge of basic legal principles, and lack of knowledge of statutes significantly contributed to the Personnel Appeals Board making many incorrect rulings, and ultimately, the wrong decision – the affirmation of my dismissal.

   2. While testimony was being given, Charles Alexander stated that I had to show that the charges in the August 11, 1995 dismissal letter were untrue.

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A. This statement by Charles Alexander is consistent with the Personnel Appeals Board's history of ruling against appellants in dismissal cases (Argument #3).
B. WAC 358-30-170 clearly states that the burden of proof rests with the respondents.

3. During the last two years of published decisions (1992/1993 and 1993/1994), the Personnel Appeals Board has not reversed a single dismissal.
   A. This is defacto evidence that the Personnel Appeals Board has in fact unlawfully shifted the burden of proof from the respondents to the appellant.
   B. This shifting of the burden of proof is also consistent with the Personnel Appeals Board giving virtually no merit or credibility to the testimony by myself and my expert witness, or to the exhibits which I introduce into evidence.
   C. This unlawful shifting of the burden of proof is also consistent with the Personnel Appeals Board making willful misrepresentations of facts.

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   D. WAC 358-30-170 states that the burden of proof is with the respondents.

4. The Personnel Appeals Board made willful misrepresentations of material facts.
   A. Page 1 – 2.1 (facts) The Personnel Appeals Board states that the audit had already been done by a district manager. This is untruthful. No audit was ever done by a district manager.
   B. Page 2 – 2.3 (Summary of Board's Decision) – The Personnel Appeals Board states "Appellant simply ignored the various requirements". Another deliberately untruthful statement by the Personnel Appeals Board. The record reflects that I simply

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did not ignore the various requirements for the preparation and service of the subpoenas.

D. Page 5 – 3.4(1) – I did not stipulate that the agency manager made payment twenty (20) days after the audit. What I did stipulate to was that I permitted the agency manager to pay the audit shortage after the conclusion of the audit.

E. Page 7 – 3.10 - The Personnel Appeals Board stated "He acknowledged ... without any evidence ...". This was a flagrant and deliberate lie by the Personnel Appeals Board. I introduced into evidence an exhibit from the Attorney General's Office in which the Attorney General's Office ruled that the agency managers were employees of the Liquor Control Board, and not independent contractors. I also introduced into evidence a number of exhibits, and testimony, that the Internal Revenue Service (IRS) ruling applied only to one agency manager, and that the IRS ruling was incorrect. Furthermore, I introduced into evidence exhibits and testimony which proved that the contract was not a valid legal contract.

F. Page 10 – 4.10 – the Personnel Appeals Board states that Don Swanson was denied his witness fees. Another willful misrepresentation of facts by the Personnel Appeals Board. Neither Don Swanson, or any other person I subpoenaed, ever made a demand for witness fees.

5. The Personnel Appeals Board improperly quashed the subpoenas I issued.

A. It is unlawful for the Personnel Appeals Board to have different rules for attorneys and non-attorneys for the preparation of subpoenas.

B. WAC 358-30-120(3) state that anyone not represented <u>may</u> present the subpoenas to the

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Appeals Board for signature. May means optional, not mandatory. Furthermore, I asked a Personnel Appeals Board employee if I was required to have the Personnel

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Appeals Board sign the subpoenas. Their answer was "No".

C. The Personnel Appeals Board is subject to Chapter 34 of the Revised Code of Washington – The Administrative Procedures Act. RCW 34.05.010(18) specifically permits service by first class mail.

D. All individuals I subpoenaed were current employees of the State of Washington. WAC 358-30-130 specifically states that state employees in pay status are entitled to mileage only. Don Swanson, who resides in Kelso, and Martin Mitchell, who resides in Seattle, had state vehicle assigned to them. As such, there would be no mileage for them.

E. All witnesses and documents I subpoenaed were directly relevant to the hearing. The Personnel Appeals Board erred in stating otherwise.

F. The Personnel Appeals Board stated that Martin Mitchell never received his subpoena. The evidence suggests that Martin Mitchell simply refused to go to the Post Office and pick up his certified letter which contained his subpoena. All other individuals I subpoenaed received their subpoenas.

G. I sent all subpoenas certified mail, restricted delivery, return receipt. I believe that this method of service conforms to CR 45(c).

H. WAC 358-30-120 which requires personal service is contrary to RCW 34.05.010(18).

I. WAC 358-30-005 specifically states that the Personnel Appeals Board will waive any

requirement which will result in a manifest injustice for anyone not represented by legal counsel. The Personnel Appeals Board erred in not applying WAC 358-30-005 to my serving the subpoenas by mail.

6. The Personnel Appeals Board did not hear my appeal in a timely manner.
   A. My hearing before the Personnel Appeals Board was held on February 29, 1996 - approximately 180 days after the Personnel Appeals Board first received my appeal.
   B. RCW 41.64.100 requires the Personnel Appeals Board to hear my appeal and render a decision within 90 days.
   C. The Personnel Appeals Board knew of their duty to comply with the statute, but willfully refused to do so. The fact that the Personnel Appeals Board had other appeals pending does not excuse their non-compliance with the statute.
   D. The Personnel Appeals Board may extend the deadline for the hearing with the consent of both parties. At no time did I consent to an extension of the 90 day deadline for the hearing to be held and a decision rendered.
   E. The Personnel Appeals Board had the authority under RCW 41.64.080 to appoint a hearings examiner to conduct the hearing. The

<end of p. 9>

Personnel Appeals Board had a duty to appoint a hearings examiner so that the requirements of RCW 41.64.100 were complied with.

7. The Personnel Appeals Board did not render their decision in a timely manner.
   A. The Personnel Appeals Board rendered their decision on April 2, 1993 - 33 days after the hearing. RCW 41.64.120 requires the Personnel

Appeals Board to render their decision within 30 days of the hearing. The Personnel Appeals Board's non-compliance with this statute is part of a pattern of willful non-compliance of statutes by the Personnel Appeals Board.

8. The Personnel Appeals Board erroneously relied upon perjured testimony.
   A. Bob Schulhauser testified untruthfully regarding the use of the computers to generate Appendices A's & B's.
   B. Jim Hoing testified that the IRS ruled that all liquor agency managers were independent contractors for tax purposes. This statement by Jim Hoing was untruthful.
   C. The perjured testimony of Bob Schulhauser and Jim Hoing materially impacted the decision by the Personnel Appeals Board.

9. I was not provided a copy of the transcript of the hearing, as required.
   A. I made several requests of the Personnel Appeals Board for a copy of the transcript of the hearing. The requests were made verbally and in writing. The Personnel Appeals Board has refused to comply with my requests for a copy of the transcript. This is a violation of RCW 41.64.110. This had a detrimental effect on my ability to file an effective appeal.

10. I was retaliated against for reporting a wage and hour violations.
   A. On several occasions I notified Liquor Board management that they illegally deducted almost one thousand dollars from the paycheck of Margaret Proffitt, manager of State Liquor Agency #526, Republic.
   B. I also strongly objected to my supervisors deducting eight (8) hours of annual leave from my July 25, 1995 pay voucher. Annual leave hours

are wages within the meaning of RCW 49.46.010. Jim Hoing willfully violated RCW 49.48.010 by deducting eight hours of annual leave without my consent.

C. The Personnel Appeals Board had a duty to reverse my dismissal and reinstate me if any part of my dismissal was related to the Liquor Control Board retaliating against me for reporting a wage and hour violation.

11. The Personnel Appeals Board improperly allowed into evidence the

<end of p. 10>

Respondents witness statements.

A. The Personnel Appeals Board in making their decision that dismissal was the proper course of action by the Liquor Control Board in regard to my employment, relied on, in part, on witness statements (complaints) by some of my auditees. The Personnel Appeals Board erred in allowing the witness statements into evidence and in relying on them.

B. Inherent in the due process clause of the fifth amendment to the United States Constitution and Article 1, Section 3 of the Washington State Constitution is the right to a fair hearing. A fair hearing requires the right to cross examine the opposing party's witnesses. The right to cross examine the opposing party is specifically afforded in RCW 41.64.110 and WAC 358-30-030(3). I was denied the right with respect to the respondents witnesses whose testimony was entered into evidence solely by a witness statement.

C. Most of the witness statements were from individuals who were on the respondents list of potential witnesses. The witness statements should

have been excluded from evidence for lack of a proper foundation.

D. The Personnel Appeals Board improperly gave credibility to the witness statements. These statements were from individuals who were deficient in the performance of their duties of their positions. Those individuals who are managers were reacting to unfavorable audit reports.

12. The Personnel Appeals Board denied me meaningful cross examination of the respondent's witnesses.
    A. During my cross examination of Jim Hoing and Bob Schulhauser, the Personnel Appeals Board to answer questions. The Personnel Appeals Board's refusal to compel Jim Hoing and Bob Schulhauser to answer questions on cross examination effectively negated my cross examination of them.
    B. The Personnel Appeals Board owed me a duty to allow me an effective and meaningful cross examination of the respondent's witnesses. RCW 41.64.110 and WAC 358-30-030(3) specifically provide for the cross examination of witnesses. Being allowed meaningful cross examination is an essential element in receiving a fair hearing that is consistent with the due process clause of the fifth amendment of the United States Constitution and Article 1, Section 3 of the Washington State Constitution.

13. Bob Schulhauser and the Liquor Control Board engaged in unlawful class discrimination.

<end of p. 11>

    A. Bob Schulhauser, with the approval of his supervisor Jim Hoing and the Liquor Control Board's Board of Directors, willfully discriminated against those who are certified public

accountants. Bob Schulhauser, by, of, and through his actions took deliberate steps to harass and discredit those individuals on the Liquor Control Board's audit staff who are certified public accountants. These steps were taken for the sole purpose of removing from the Liquor Control Board's audit staff those individuals whom he felt threatened by. Bob schulhauser's actions were driven by his jealousy and envy of those who were more competent and accomplished than him.

B. The Personnel Appeals Board owed me a duty to allow me to introduce testimony to what Bob Schulhauser's true motive was for terminating my employment. Jim Hoing's and Bob Schulhauser's willful discrimination against certified public accountants violated the intent of RCW 49.60.210. The intent of the statute was to prevent discrimination against individuals for inappropriate reasons.

C. The decision was based on violations of constitutional principal.

1. The Personnel Appeals Board improperly allowed into evidence the Respondents witness statements.
   A. The Personnel Appeals Board in making their decision that dismissal was the proper course of action by the Liquor Control Board in regard to my employment, relied on, in part, on witness statements (complaints) by some of my auditees. The Personnel Appeals Board erred in allowing the witness statements into evidence and in relying on them.
   B. Inherent in the due process clause of the fifth amendment to the United States Constitution and Article 1, Section 3 of the Washington State Constitution is the right to a fair hearing. A fair hearing requires the right to cross examine the opposing party's witnesses. The right to cross

examine the witnesses of the opposing party is specifically afforded in RCW 41.64.110 and WAC 358-30-030(3). I was denied the right with respect to the respondents witnesses whose testimony was entered into evidence solely by a witness statement.

C. Most of the witness statements were from individuals who were on the respondents list of potential witnesses. The witness statements should have been excluded from evidence for lack of a proper foundation.

D. The Personnel Appeals Board improperly gave credibility to the witness statements. These statements were from individuals who were deficient in the performance of their duties of their positions. Those individuals who are managers were reacting to unfavorable audit reports.

<end of p. 12>

2. The lack of any technical rules of evidence is unconstitutional.
   A. RCW 41.64.110 states in part"... and shall be informal with technical rules of evidence not applying to the proceedings...". This part of RCW 41.64.110 violates the due process clause of the fifth amendment of the United States Constitution and Article 1, Section 3 of the Washington State Constitution.
   B. Due process means a fair hearing. A fair hearing can not be had when there are no technical rules of evidence. The lack of any technical rules of evidence resulted in evidence being allowed into the record that should have been excluded from the record. The tainted evidence unfairly prejudiced the Personnel Appeals Board in the rendering of their decision.

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3. The Liquor Control Board had different standards for myself than the other auditors.
   A. Bob Schulhauser, my immediate supervisor, and Jim Hoing had different standards for myself than the other auditors. The equal protection clause of the fourteenth amendment to the United States Constitution mandates that employees in the same job classifications be treated equally. Bob Schulhauser and other auditors violated statutes and/or disregarded orders. There is no evidence that any disciplinary action was ever taken against these individuals.
   B. The Personnel Appeals Board owed me a duty to consider whether I was held to the same standards as Bob Schulhauser and the other auditors. The Personnel Appeals Board erred in refusing to allow me to offer testimony with respect to this issue.

4. The Liquor Control Board was negligent in their supervision and retention of Jim Hoing and Bob Schulhauser.
   A. The Liquor Control Board was gross negligent in the supervision and retention of Jim Hoing and Bob Schulhauser. At all times during my employment, the Liquor Control Board's Board of Directors knew of Jim Hoing's and Bob Schulhuaser's willful violations of personnel procedures, willful violations of statutes, willful violations of professional auditing standards, and their willful untruthfulness. They also knew of Bob Schulhauser's difficulties in getting along with other people. The Liquor Control Board owed me a duty to properly supervise Jim Hoing and Bob Schulhauser, and to terminate their employment. The Liquor Control Board's negligence in supervising and retaining Jim Hoing and Bob Schulhauser was the direct and approximate cause of the termination of my employment.

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B. The Personnel Appeals Board owed me a duty to offer testimony as to the Liquor Control Board's negligence in supervising and retaining

<end of p. 13>

Jim Hoing and Bob Schulhauser. This duty extends from the fifth amendment of the United States Constitution and Article 1, Section 3 of the Washington State Constitution. A fair hearing can not be had when relevant testimony is excluded from the record.

5. Correspondence between myself and my supervisors and Liquor Board management was strictly protected by the first amendment to the United States Constitution.
   A. I was reprimanded, and ultimately terminated, in part, for exercising my rights under the first amendment to the United States Constitution. The communication between myself and my supervisors and others in Liquor Board management, although often times critical, was strictly protected as free speech under the first amendment of the United States Constitution.
   B. The Personnel Appeals Board owed me a duty to reverse my dismissal if I was dismissed, in whole or in part, for exercising my rights of free under the first amendment of the United States Constitution. The Personnel Appeals Board erred by failing to consider this issue.

6. The Personnel Appeals Board allowed double jeopardy for certain alleged infractions.
   A. My supervisors had previously written me letters of reprimand for several of the alleged

infractions. It was improper for me to be punished more than once for an alleged infraction.

B. The fifth amendment of the United States Constitution and Article 1, Section 3 of the Washington State Constitution expressly prohibit a person from being punished more than once for an alleged infraction.

C. The Personnel Appeals Board ruled in several appeals that a person who has previously received a letter of reprimand can not be punished again for the same alleged infraction. The Personnel Appeals Board did not follow its own prior published rulings with respect to this issue.

D. The letters of reprimands were not titled as such. However, what controls is the substance of the letter. The substance of the letters were that they were letters of reprimands.

E. I raised this issue during the hearing. The Personnel Appeals Board refused to give it any consideration. They owed me a duty to do so.

7. The Personnel Appeals Board denied me meaningful cross examination of the respondent's witnesses.

A. During my cross examination of Jim Hoing and Bob Schulhauser, the Personnel Appeals Board to answer questions. The Personnel Appeals Board's

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refusal to compel Jim Hoing and Bob Schulhauser to answer questions on cross examination effectively negated my cross examination of them.

B. The Personnel Appeals Board owed me a duty to allow me an effective and meaningful cross examination of the respondent's witnesses. RCW 41.64.110 and WAC 358-30-030(3) specifically provide for the cross examination of witnesses. Being allowed meaningful cross examination is an essential element in receiving a fair hearing that is consistent with the due process clause of the fifth amendment of the United States Constitution and Article 1, Section 3 of the Washington State Constitution.

D. The decision of the Personnel Appeals Board is incorrect because it is founded on errors in the construction and application of laws, as follows:
   1. The Personnel Appeals Board erroneously relied upon prior Personnel Appeals Board decisions.
      A. The Personnel Appeals Board, in support of their decision, relied, in part, on Personnel Appeals Board decisions from 1994/1995 and 1995/1996 (to date). These decisions which are not yet published. Specifically, I requested to review decisions involving dismissals. My request was denied. I was told by an employee of the Personnel Appeals Board that it was far too time consuming to have such decisions available for my review.
      B. The Personnel Appeals Board readily found the decisions they made in 1994/1995 and 1995/1996 (to date) to support their decision. Yet, when I requested to review these decisions, I was told it was a major burden on the Personnel Appeals Board that was too time consuming for them.
      C. The Personnel Appeals Board violated the fairness doctrine to rely on Personnel Appeals Board decisions for which I had been denied

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access to. The Personnel Appeals Board owed me a duty to comply with RCW 41.64.070.

2. The Personnel Appeals Board only allowed managements version of the record as to why I was dismissed.

A. The Personnel Appeals Board only allowed into the record Liquor Control Board management's version as to why my employment was terminated. This is clearly reflected in the record when Charles Alexander, Chairman, stated that the August 11, 1995 dismissal letter was the record and that he would not allow into evidence any exhibits or testimony that did no directly address the issues in the August 11, 1995 dismissal letter.

B. The fairness doctrine dictates that quasi-judicial decision makers conduct hearings in an objective and impartial manner. It also dictates

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that the appellant be given the opportunity to be heard. The Personnel Appeals Board did not comply with the fairness doctrine when they only allowed managements version as to why I was fired.

C. The right to a fair hearing is also guaranteed under the due process clause of the fifth amendment to the United States Constitution and Article 1, Section 3 of the Washington State Constitution. The right to a fair hearing is not limited to judicial proceedings (*State ex rel Baldwin v. Moore* (1893)7 Wash 173.

D. The Personnel Appeals Board owed me a duty to allow into evidence as to what I believed to be the true reasons for my dismissal. The reasons being that I was fired in retaliation against for blowing the whistle on my supervisors and Liquor

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Board management for their own willful misconduct. I was not given the opportunity to be heard.

3. The Liquor Control Board failed to comply with its own personnel policies and procedures.
   A. The Liquor Control Board did not comply with its own personnel policies and procedures prior to terminating my employment. The Liquor Control Board owed me a duty to comply with its own personnel policies and procedures prior to terminating my employment.
   B. The Personnel Appeals Board owed me a duty to determine if the Liquor Control Board had complied with its own personnel policies and procedures. If the Personnel Appeals Board found that the Liquor Control Board had in fact not complied with its own personnel policies and procedures, the Personnel Appeals Board owed me a duty to immediately reverse my dismissal.
   C. Furthermore, it violates public policy for the Personnel Appeals Board to hear an appeal with first requiring the state agency to comply with its personnel policies and procedures. If state agencies are allowed to take personnel action against employees without first being required to comply with such personnel policies and procedures, then the personnel policies and procedures become meaningless.

4. The Personnel Appeals Board improperly excluded testimony by and for my behalf.
   A. The Personnel Appeals Board refused to allow me to attack the credibility of Jim Hoing and Bob Schulhauser. As a result, the Personnel Appeals Board gave credibility to testimony and exhibits that lacked credibility. The Personnel Appeals Board allowed into evidence exhibits from the respondent which were largely untruthful. Yet, the Personnel Appeals Board

refused to allow me to prove that Jim Hoing had willfully written statements which he knew to be

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untruthful. The Personnel Appeals Board likewise refused to allow me to attack the credibility of documents written by Bob Schulhauser.

B. The Personnel Appeals Board's refusal to allow me to attack Jim Hoing's and Bob Schulhauser's credibility violated the fairness doctrine and the due process clause of the fifth amendment to the United States Consitution and Article 1, Section 3 of the Washingtoon State Constitution. Inherent in the due process clause is a fair hearing. A fair hearing was not held when I was denied the opportunity to prove the Jim Hoing had deliberately lied in several documents which he wrote which the respondents introduced into evidence; and that Bob Schulhauser conduct was improper with regard to documents he wrote.

IV. Prayer for relief:

1. I ask that I be reinstated to my position as an auditor with the Washington State Liquor Control Board, with back pay and benefits to August 31, 1995.
2. I ask the Liquor Control Board be ordered to immediately return all equipment to me that was assigned to me immediately prior to my employment with the Liquor Board being terminated.
3. I ask that, upon reinstatement, the Liquor Control Board be prohibited from placing any undue restrictions on me in the performance of my assigned duties.
4. I ask that the Liquor Control Board also be ordered to comply, and to comply at all times, with all applicable state and federal statutes, professional auditing standards, and the Liquor Control Board's own personnel policies and procedures.

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I currently have no work telephone number or message number.

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RESPONDENTS

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DATED April 30, 1996
/s/ Robert I. Ringo
PETITIONER, PRO SE

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